

*Jus Appellandi*  
A D  
REGEM Ipsum

A  
CANCELLARIA:

O R,  
A Manifestation of the King's  
Part and Power to Relieve His  
Subjects against *Erroneous* and  
*Unjust Decrees* in CHANCERY.

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*Collected out of the Authorities of Law.*

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By WALTER WILLIAMS of the  
Middle-Temple, Esq;.

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*Rex sapiens judicabit Populum su-*  
*um, Bract. l. 3. 107.*

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Entered according to Order.

---

L O N D O N,  
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TO THE  
High and Mighty MONARCH,  
CHARLES II.

By the Grace of GOD  
KING of Great-Britain, &c.

Most Gracious Sovereign,



Aving spent many years in the study of your Majesty's Laws, and conceaving that several for whom I was concern'd as Councel had been much wrong'd a while since by Decrees in *Chancery*, and finding that they were past hopes of being Righted There, I advis'd Petitions to be preferred to Your Majesty, *the Fountain of Justice*, thereby beseeching Your Majesty to relieve Your Petitioners, either by rehearing the matter in Your Royal Person, or by referring it to such fit persons as Your Majesty should nominate : whereupon it was declared by some near Your Majesty, *That Your Majesty could not legally grant your Petitioners Request ; and that no Relief could be had against Chancery-Decrees but by the House of Lords assembled in Parliament ;* which thing I apprehend

prehended to be a great mistake, and  
tended (as I conceiv'd) to the Outing of  
Your Majesty of that Just and Necessary  
Jurisdiction, Preheminence, and Authori-  
ty which is united and annexed to your  
Imperial Crown, and which to assist and  
defend to my Power I am bound by Oath :  
In dischARGE whereof I have made diligent  
search for what evidence could be found  
in the Authorities of Law to make out  
Your Majesties just Title to the premisses,  
and what I have found I have made a  
methodical Collection of, being, I hope,  
sufficient for the purpose ; whereunto I  
have also added some instances of the  
great mischief it is to your Subjects, and  
may be to Your self, your Crown and  
Dignity, that Your Majesties Power in  
that matter is not put in practice. All  
which I humbly lay at Your Majesties  
Feet, begging Your Majesties acceptance  
and consideration thereof, as it is the  
product of the unfeigned Fidelity and Al-  
legiance of

Dread SIR,

*Your Majesties most Faithful  
and Obedient Subject,*

W. A. WILLIAMS.

To His Majesties most Honourable  
**PRIVY-COUNCIL.**

Great Sirs,

**N**Ext to His Sa-cred Majesty, to  
<sup>a</sup> You all Honour  
 and Reverence a C. 4. Inst. 53.  
 Crompt. Juris. 35.  
 is due, as being Incorporate  
 to His Person, and Whose  
<sup>b</sup> High Office it is, accor-  
 ding to the best of your Judg-  
 ments truly and justly to ad-  
 vise and counsel the King in all things that  
 may be to His Honour and Behoof, and for  
 the good of His Subjects. And though His  
 Majesty is arm'd with several other Councils  
 for several purposes, yet it is with You that  
 he consults and advises (amongst other the  
 most weighty Affairs of State) when, and  
 upon what occasion it is that He is to call  
 to His other Councils for Advice and As-  
 sistance. It appears by the  
 Writs of Summons of the Crompt. Ju. fo 1.  
 Lords to Parliament, and  
 by the Writs to the Sheriffs for Election of  
 Knights and Burgeses, that it is by Your  
 advice the King doth call His Parliament;  
 for after the Salutes in those Writs are these  
 A 3 words,

words, viz. Quia de Advifamento & Affenfu  
 Concilii noſtri pro quibuſdam arduis &  
 urgentibus negotiis nos ſtatum & deſenſi-  
 onem Regni noſtri Anglia, & Eccleſiæ  
 Anglicana concernentibus, quodam Par-  
 liamentum noſtrum, apud, &c. teneri or-  
 dinavimus. If then it appertains to You to  
 adviſe His Majeſty when it is proper to call  
 His Parliament, it follows of conſequence  
 that it appertains to You alſo to adviſe Him  
 to call His other Councils upon occaſion:  
 And hence I conceive it is that You have  
 been Dignified in ancient Records by the name  
 of Magnum Concilium Regis, and there-

Co. 1 Inſt. 110.  
 cites Records to  
 that purpoſe.

by diſtinguiſhed from Mag-  
 num Concilium Regni,  
 which is the Parliament.  
 Therefore, and in as much  
 as frequent ſupplications have of late been  
 made by divers to His Majeſty for Relief a-  
 gainſt miſtaken Decrees in Chancery with-  
 out effect, by reaſon of ſome Opinions that  
 there was no legal Remedy in ſuch Caſes, but  
 by Appeal to the Lords Houſe aſſembled in  
 Parliament: I have, for the advancement  
 of Juſtice, and maintenance of the King's  
 Right of Jurisdiction, compil'd, and adven-  
 tured humbly to recommend this enſuing  
 Treatiſe to His Majeſty and Your conſidera-  
 tion; which if You vouchſafe to peruſe, I  
 hope

*hope it will make it so clear that His Majesty may lawfully relieve His Subjects against such mistaken Decrees in the Intervals of Parliament, as to confute all Opponents, or at leastwise manifest so much probability thereof, and that there is so much necessity for the use of it, as may induce You to advise and desire His Majesty to be further satisfied therein by the Opinion of His whole Colledge of Judges, who in case of doubt in matters of Law, our Law-Books say, are his particular and sworn Council; In doing whereof, I humbly conceive you will perform an act that will highly redound to the Honour of the King, & welfare of His injur'd Subjects: my Zeal to Both which bath put me upon begging Your favourable Reception and Interpretation of this Labour of His, who submits both Himself and It to Your Honours Command.*

Co. 1 Inst. 110.  
vi. Jurament. Justiciarior. 18  
E. 3.

W. W.

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*Jus*

(1)

*Fus Appellandi*

A D

REGEM

*Ipsū a*

*Cancellaria.*

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SECT. I.

*Of the mutual Obligation upon  
King and People, in reference  
to Government.*



Whoever will but consider it, may easily discern, that there is a mutual benefit accrues by Government, as well to the People as to the King; the end & design of it being the protection of  
B Both

Both from wrong and violence: And to the end this may be the better accomplish'd, both are mutually bound in *England* to act their part therein: The King is bound to govern by Law, and the People most of the considerable part of them are bound, and all of them are compellable to be bound to assist and defend all Jurisdictions, Privileges, Prebeminences and Authorities, granted or belonging to the King, His Heirs and Successors, or united or annex'd to the Imperial Crown of this Realm; the King by the very Constitution of his Kingly Office, and by his Coronation-Oath; and the People both by their Natural Allegiance, and by force of the Statute i *Eliz.* cap. 10. It is not a slight and mean tie that they are bound by, it is by a sacred and solemn Oath, the greatest obligation upon Earth, and the firmest bond of *Humane Society*; which whosoever voluntarily breaks, either by a wilful acting against, or by a careless neglecting to perform, what



what he hath undertaken by it, I'll be bold to say, He is fit Company for none on this side Hell, unless for some *perjur'd Aldermen*, or *false Ignoramus-Jury-men*.

Being thus engag'd, I think it highly concerns us all to discharge our Duty therein ; and to that end it is necessary, in the first place, to understand what *Jurisdictions*, *Pre-eminencies*, *Priviledges* and *Authorities* do appertain to the King ; for without That, the King cannot exercise His *Jurisdiction*, nor the People assist Him in it : And in as much as the *King's Jurisdiction* over His *Court of Chancery* is now doubted of by many, dis-own'd by some, and by others thought not necessary to be put in execution ; I therefore set my self upon enquiry after the King's Part and Power in that particular, having had experience of the inconveniencies the want of the use of it produceth.

## SECT. II.

What is Jurisdiction ; to Whom it appertains ; and How anciently exercised in this Kingdom.

**J**URISDICTION, in the bare literal sense and signification of the word, and *ex vi termini*, imports no more than *Dire Droit*, or *Jus dicere*, a Power to pronounce, interpret or relate what is Law and Right, in any matter of Controversie : But as necessary appendants thereunto, there are many Priviledges and Authorities needful, to make up a full and plenary Power to administer Justice, which are generally comprehended within the meaning of *Jurisdiction* ; As, *first*, an Authority to *Command* the party or parties complain'd against, before Him that hath Jurisdiction : *Secondly*, to *Examine* the

the truth of the complaint, and to hear the Defendants defence : *Thirdly*, to give Judgment according to what the Law is : *Fourthly*, to compel Obedience to, and Performance of that Judgment which is done either by Imprisonment of the person until he perform, or by seizing his Estate, or part of it, in satisfaction of the Judgment, which is the *Coercive Power* of the Law, without which the rest signifies but little.

The right of *Jurisdiction* is a prize for which great Contests have been for many Ages in this Kingdom : the *Pope* for a long time struggl'd with our Kings for *Jurisdiction* in *Ecclesiastical* matters ; some yielded to him, and some would not ; The *House of Commons* have often strove with the *House of Lords* for *Jurisdiction* ; the King's Courts of Justice have often contended with one another for *Jurisdiction* ; and now some would have it, that the King's own more immediate Court, his High-

*Court of Conscience*, would be so highly unconscionable, as to out Him from having any thing to do there.

To find out the true Proprietors of *Jurisdiction*, for which there hath been so many pitch'd Battles fought, it is necessary to look a great way back, *Origorei inspicere debet*, the beginning must be consider'd, *Deut. 32. 7. Remember the days of old, consider the years of many Generations; ask thy Father, and he will shew thee; thy Elders, and they will tell thee.* After this manner will I make my Enquiry; for I know no *Statute of Limitation* in the case to bar the King by non-claim; but there is a Maxim in Law which imports the contrary, *Quod nullum tempus occurrit Regi*; and therefore what I find in old Authors as well as new, I will truly relate.

*Bod. l. 4. cap. 6.* By the Opinion of all ancient & wise Politicians and Historians, (says *Bodin*) *Iusticiæ fruendæ causa Reges esse creatos;*  
Kings

Kings were ordain'd for no other end, than for administration of Justice, which is a full Authority that Jurisdiction appertained to *Kings*, even by their Constitution ; and the same Author says, That anciently the Kings of most Nations and Countreys were called *Judges*, and they thought no other Appellation or Title more honourable than That, and they delighted in nothing more then a personal, not only virtual, but actual, determining of their Subjects Controversies.

*Moses* for a great while Ex. 18.  
 spent the greatest part, or much of his time, sometimes even from morning until evening, in hearing and determining Controversies between the people ; But at length, finding that as the people encreased in number, so did Suits, insomuch that it was too hard a task for him to dispatch all himself, he therefore chose men of courage out of all *Israel*, and those he made *Heads over the people*,  
B 4
*Rulers*

*Rulers over Thousands and over Hundreds, over Fifties and over Tens, who judged the people at all seasons : but the hard causes (matters of difficulty) they brought to Moses himself to determine ; none of them pretending that because Moses had given them full power to judge the people within their several Provinces, that he had excluded himself from power of judging there, and examining whether or no their Judgments were right and just.*

*Cook 1 Inst.  
f. 168.*

In imitation of *Moses*, or after the same manner, did the ancient Kings of *England* divide this Kingdom, first into *Counties*, and *Counties* into *Hundreds*, *Hundreds* into *Manors*, and *Manors* into *Townships* and *Villages*, and appointed Jurisdictions in every Division.

In or about the time of *H. 3.* one *Henry de Bracton*, a learned Judge, finding that the **Laws and Customs of the Realm,**

*Cem. Int.  
Title Bract.*

Realm, (which at that time were not  
 reduc'd into writing) were often-  
 times abus'd by unlearned men, *Qui*  
*Cathedram judicandi ascendunt ante-*  
*quam leges dedicerent*, who became  
 Judges before they had been Stu-  
 dents, and consequently determined  
 Causes rather after their own fan-  
 cies than the Rules of Law: he there-  
 fore resolv'd, *ad vetera Judicia Ju-*  
*storum perscrutenda diligenter*, to  
 make diligent enquiry into the an-  
 cient Judgments and Resolutions of  
 just Judges, and to put the same in  
 writing for the benefit of Posterity,  
 as himself says in the first page of  
 his Book *Of the Laws and Customs of*  
*England*; and therein as to the Tem-  
 poral state of affairs, (the Pope ha-  
 ving in those days usurp'd Jurisdi-  
 ction, not only upon our *Kings*, but  
 upon many other Princes in Spirit-  
 ual matters) *Bracton* says,  
 That under Emperours, *Bract. l. 1. fo.*  
 Kings and Princes, are *s. cap. 8.*  
 Dukes, Earls and Barons, great Offi-  
 cers,

cers, men of Renown, and Knights ;  
 there are also Freemen and Bondmen,  
 and divers Authorities and Powers  
 constituted under the King ; *Omnia*  
*quidem sub eo, & ipse sub nullo, nisi*  
*tantum sub Deo, parem autem non ha-*  
*bet in regno suo quia sic amitteret præ-*  
*ceptum, cum par in parem non habet*  
*Imperium ; item nec multo fortius su-*  
*periores nec potentiores habere debet,*  
*quia sic erit inferior suis subjectis & in-*  
*feriores pares esse non possunt potentio-*  
*ribus ipse autem Rex non debet esse sub*  
*homine sed sub Deo & Lege, quia*  
*Lex facit Regem, attribuat igitur Rex*  
*Legi, quod Lex attribuat ei, videli-*  
*cet Dominationem & Potestatem.*  
 And a little further, *Et sciendum quod*  
*ipse Dominus Rex Ordinariam ha-*  
*bet Jurisdictionem & Dignitatem &*  
*Potestatem, super omnes qui in regno*  
*suo sunt habet enim omnia Jura in*  
*manu sua quæ ad Coronam & Laica-*  
*lem pertinet potestatem & materiale*  
*gladium qui pertinet ad regni Guber-*  
*naculum, habet etiam Justitiam & Ju-*  
*dicium*



*dicium quæ sunt Jurisdictiones ut ex Jurisdictione sua sicut Dei Minister & Vicarius tribuat unicuique quod suum fuerit.*

To the like effect he says in another place, treating of Temporal Jurisdiction, and Who it is that can and ought to judge, he says,  
 That it is the *King*, and Bract. lib. 3. fo. 107.  
 no other, ought to judge,  
 if He alone could compass it, being thereunto obliged by tenor of his Oath; for at his Coronation he ought in the name of Jesus Christ, upon Oath, to promise these Three things to his people that are subject to himself, 1. *That he would command, and use his utmost endeavour, that perfect peace be continued to the Church of God, and all Christian people, during all his time.* Secondly, *That he would earnestly and strictly forbid and interdict all Pillaging, Extortion, Raving, and Wickedness whatsoever.* Thirdly, *That in all Judgments he would regard Equity and Mercy, that*  
 he

he might receive Mercy from God, and that all people by his Justice may enjoy a firm and inviolable Peace.

He says further, that it is the Kings part and duty (he being Gods Vicegerent on Earth) to prefer right before wrong, Equity before iniquity, that all his Subjects might live honestly, that none of them hurt the other, and that every one of them may have and enjoy what to him of right belongs. He ought to exceed all his Subjects in Power; He ought to have no Equal, much more ought he not to have any Superiour, especially in administration of Justice, that it may be truly said of him, *Magnus Dominus noster, & magna virtus ejus*, with a great deal more to the same effect.

In the next chapter he proceeds, and says, *Dictum est in proximo de ordinaria Jurisdictione quæ pertinet ad Regem, &c.*

*Bract. l. 3.  
fo. 308.*

In the precedent Chapter the primitive and fundamental Jurisdiction which

which belongs to the King is treated of; it follows now to treat of the delegated, derived and substituted Jurisdiction, where a man hath no Authority of himself, but what is committed to him, as when he that doth so delegate or substitute another, cannot himself determine every particular Cause, and to the end his labour may be the easier, by dividing the burthen amongst divers other persons, he ought to choose in his Kingdom wise men, fearing God, in whom there is sincerity and truth of speech, who hate Covetousness, and of such to constitute Judges, Sheriffs, and other Bailiffs and Ministers, to whom may be referred as well Questions upon doubtful matters, as Complaints upon injuries, who will not decline the course of Justice to the right hand nor to the left, for hope of Reward, nor fear of Punishment. And a little further, treating of the several sorts of Justices, he says thus; *Item Justiciariorum quidam*

dem sunt capitales generales perpetui  
 & majores a latere, Regis residentes,  
 qui omnium aliorum corrigere tenentur  
 injurias & errores; sunt etiam alii  
 perpetui certo loco residentes sicut in  
 Banco, loquelas omnes de quibus ha-  
 bent warrantum terminantes qui om-  
 nes Jurisdictionem habere incipiunt  
 præstito sacramento; item sunt alii  
 Itinerantes de loco in locum sicut de  
 Comitatus in Comitatus quandoque ad om-  
 nia placita quandoque ad quædam speci-  
 ali sicut ad Assisas tantum & Gaolas;  
 Et qui authoritatem habere incipiant  
 sine sacramento cum breve Domini  
 Regis receperint de waranto sunt etiam  
 Justiciarii constituti ad quosdam As-  
 sisas duas vel tres vel plures; qui qui-  
 dem perpetui non sunt quia expleto Of-  
 ficio Jurisdictionem amittunt: That is  
 to say, Of Judges some are chief, uni-  
 versal, constant, and of greater power  
 than others, always with the King,  
 whose business it is to correct the  
 Injuries and Errors of other Judges;  
 and there are others that are of a con-  
 stant

stant continuance, resident in a certain place; as in the Bench, determining all Pleas whereof they have a warrant to determine ; all of whom begin to have Jurisdiction by taking the Oath of their Office. Also there are other Judges that move from place to place, as from County to County, sometimes to determine all Pleas, sometimes some particular Pleas, as Assizes only and Gaol-deliveries, whose Authority begins without any Oath, when they receive the King's Writ for their Warrant ; and there are Judges constituted to determine some certain number of Assizes, as two, three, or more, who are not of constant continuance, but having done what they were appointed to do, they lose their Jurisdiction. And a little further, *Et quamvis quidem eorum perpetui sunt, ut videtur finitur tamen eorum Jurisdictio multis modis, scilicet mortuo eo qui delegavit, vel mortuo eo sub cujus proprio nomine causa delegatur. Item cum delegans revocaverit*

*verit Jurisdictionem, vel alium dederis Justiciarium*: That is, Altho' some of the said Justices are of constant continuance as it might seem, yet their Jurisdiction may be determin'd several ways; that is, by the death of him who gives them Authority, or by the death of him in whose name the Suit is begun, or when he that delegates, or gives the Authority, doth revoke the Authority and Jurisdiction which he gave, or appoints another Judge. And to conclude that matter, he says, That no Judge so substituted or delegated by our Lord the King, can substitute or delegate another.

Thus far *Bracton*; whence it is most clear, that all primitive and original Jurisdiction was in the King, and all substituted and delegated Jurisdiction was derived from Him only, and under such limitations as he directed, so as the Judges did act justly; the main charge of administering Justice being on Him; and he frequently

quently fate himself in Judgment, assisted by his *Capitales Justiciarios à latere suo residentes*, who assisted him in the exercise of his Jurisdiction, and eas'd him of trouble ; but they never pretended to deprive him of his power of hearing and determining himself, or changing his Judges, or assigning them Jurisdiction as should be needful, according to the modern Doctrine of some ; for he had both complete Jurisdiction, and *designati-onem Justiciariorum*, in himself ; and it was upon good reason this power was originally placed by God in Kings, and consented unto, and approved of by good men ; for by the assistance of, and reasoning with their Judges, they could never fail of discerning right Judgment, and their affection to their Subjects (like a good Father to his Children) being equal to all, it is not likely they should be partial in their Judgments ; and their Royal Estate is such, as not to value Bribes or Rewards :

So that there is not so much reason to fear Injustice from a *King*, as from a *profess'd Lawyer*, (like my self) whose aim and design (perhaps) from his *Horn-book*, was gain and profit, and to raise himself a Name and Family in the world. I can but wonder then, whence started that humour in men, rather to trust any body in deciding their Controversies, than the King? sure it could be from no just Principle.

Besides the fore-mentioned Author *Bracton*, there are others of the same standing, that maintain the same Doctrine.

The next I shall name is one *Horn*, who about the time of *Edm. I.* compiled a Book *Of the Laws and Usages of England*, a great part whereof (as Sir *Edward Cooke* in his Preface to the 9th. part of his *Reports* affirms, were such Laws as the Kingdom was govern'd by for about 1100 years then past; to which Book he gives a mighty credit, and in matters of difficulty



difficulty is very frequently his *ipse dixit*; and that Author says, That Jurisdiction is the chiefest Dignity that appertains to the King: and thereof, he says, there are two sorts, and he calls them ordinary, and assign'd, which are the same with Original and Delegated, as the other Author terms them. *Jurisdiction* (says he) can be assign'd by none but by the King; and he may do it, because he cannot without assistance perform such a charge; and therefore it was of old ordained, that there should be a Seal, and a Chancellor to keep it, and grant Writs remedial to all Complainants without delay. This was the Chancellors Province then.

Mirror

232.

Ibid. 232.

And again he says, *Jurisdiction est un potat a dire Droit*; a power of commanding right to be done; and this power God gave unto *Moses*, and such as hold the like place as he; and this power belongs unto the King within

Ibid. 234.

his Dominions, and He, {by his Authority-Royal, makes his Justices in several degrees, and doth  
 Ibid. 235. limit to every one his power after several manners. And there he enumerates divers sorts of Commissions and Courts ; and speaking of the chiefest Justices of all, he says, *They determin'd matters more or less, according to the nature of their Commission* : From whence also it follows, there were no Judges that had, or pretended to have, any Jurisdiction originally or fundamentally in themselves ; but what all of them had, was by deputation and delegation from the King. Furthermore, *Edw. 1.* out of his Princely care that his people should be govern'd by certain and known Rules, caused the Laws and Rules of Government, and disposition of Property, which thentofore had been used in the Kingdom, to be put in writing, and publish'd in his own Name ; and at the same time commanded

manded the use and practice of those Laws in all points throughout his whole Dominion ; saving, and always reserved to himself, the power of repealing, altering, and amending of them, as should seem good to him, with the assent of his Earls, Barons, and others of his Council ; and saving such Usages and Customs as had been time out of mind used, so that they be not discourdants a droit. And there he proceeds in this manner, *viz.* *En primes en droit de nous mesmes & nostre Cource avouns issint ordayne, &c.* which is to this effect, That first of all, in the right of Himself, and of his Court, because he could not in his own Person hear and determine all the complaints of his people ; and to the end that his charge should be divided as is thereby appointed, he did ordain, and his will and pleasure was, *That his own Jurisdiction should be superiour to all the Jurisdictions in his Realm :* So that in all manner of Felonies, Trespases,

passes, Contracts, and in all manner  
 of Actions real and personal, he had  
 power to give, and cause to be given,  
 such Judgments as thereto belonged,  
 without any other Process, (where  
 he knew the direct truth) as Judge.  
 And there also he appoints, That the  
 Steward of his Household should re-  
 present Him within the Verge, and  
 he assigned him his Jurisdiction,  
 which was, *to hear and determine the  
 presentments of Articles which concern  
 the Crown, whensoever it should seem  
 good to the King*; And moreover,  
 he will'd, that Justices in *Eyr* should  
 be assign'd to hear and determine  
 those Articles in every County, and  
 in every Franchise, from seven years  
 to seven. And there he gives the  
 like power to his Justices of *Ireland*  
 and *Chester*; and wills further, That  
 the Count or Earl of *Norfolk*, by  
 himself or some other Knight, should  
 always attend upon the King and his  
 Steward within the Verge of the  
 King's House, so long as he should  
 hold

hold the Office of Marshal. And there he appoints the Jurisdiction of the Justices assign'd, *to follow the King, and be where He was, if in* Britt. fo. 21 England ; and that they should have consuance to amend false Judgments, to determine Appeals, and other trespasses done against the Kings Peace and Jurisdiction. He also appointed a Coroner to be in the Kings House, and in every County (un Aiscout) a Sheriff; and that under those Sheriffs there should be Hundreders, Serjeants and Bailiffs, who should attend upon the Sheriffs. He also appointed Coroners in every County, and allotted them their Jurisdiction. And moreover, his will and pleasure was, *That there should be Justices always residing at Westminster, or elsewhere. (where he should appoint) to determine such common Pleas as the King should command them by his Writs, so as the Pleadings arising thereupon should be recorded.* He settled the Jurisdiction of the Exche-

*quer Court*, and ordained, That there should be Justices assign'd for every County, to have conuſance in ſuch cauſes as the King ſhould command by his Letters-Patents touching Pety-Aſſizes, and of other things whereof the Kings will ſhould be they ſhould make record, and that there ſhould be Juſtices of Gaol-delivery in every County; And he granted to the ſaid Juſtices, that they ſhould have the keeping of the Records of the Pleas pleaded before them; But they were not to raſe or amend their Rolls, or to make Record contrary to their Enrollments; Alſo, that the power of the Juſtices ſhould be limited in ſuch manner, that they exceed not the points contained in the Writs or Preſentments of Jurors, nor complaints to them made, ſaving ſuch incident matter, as without which the original cauſes could not be determined. And he utterly forbids and prohibits that any ſhall have power to amend any unjuſt or erroneous

erroneous Judgment of his Justices, but only those Justices which followed Him and his Courts, (who thereunto were by him entitled) or Himself or his Councel; for that matter he specially reserv'd to his own Jurisdiction. He forbids also all his Coroners and Justices, except his *Seneschal*, his Steward, and his Justices of *Ireland* and *Chester*, to make any Deputies to do any thing whereof they ought to make record, without the King's leave. He will'd also, That in Counties, Hundreds, and in the Courts of every frank Tenement, there should be Courts held by the Suitors; and also in Cities, Towns, Boroughs, and Franchises, &c.

Besides this Book, written by King *Ed. 1.*'s command, and in his own name, a while after there was another Book written, (by whom it is not known) called *Fleta*, and it was in the Reign of *Ed. 2.* or *3.* And that Author says, *That Judgment is*

*Fleta lib. 1.  
cap. 17. fo.  
16.*

*a threefold act, of three persons at the least, the Judge, the Plaintiff and the Defendant, without which there can be no Judgment : Nor (says he) can any one Judge in temporal matters, but only the King, or his Substitutes and Delegates. And the same Author, in his Tract of the diversity of*

*Fleta lib. 2.  
fol. 16.*

*Courts, says as followeth : The King hath a Court in his Conncel, in his Parliaments when present, the Prelates, Earls, Barons, Nobles, and other skilful men, who are to determine the doubts of Judges, and where, upon appearance of any new sort of injuries, new remedies are provided ; and where Justice is to be rendred to every one according to what belongs to him. He hath also his Court before his Steward in Aula sua, in his Hall, who now (says he) supplies the place of the Capitalis Justiar' ; whereof mention is made in the common Writ of *homine replegiando*, who was wont to hear the  
Kings*



Kings own Causes, to rectifie false Judgments, and to do Justice to Complainants, without Writ; whose Power, in part, the said Steward of the Kings Household hath. Also, the King hath his Court of *Chancery* in several places in his House. He hath also a Court before his Auditors specially appointed, to be near the King, whose Office extends but to the Justices and others of the Kings Ministers, to whom there was no power granted to determine what they heard, but to relate the matter to the King, that he might direct punishments according to the quality of the Offence. He hath also his Court and Justices, as well Knights as Clergy-men, (*locum suum tenentes in Anglia*) before whom, and not elsewhere, unless before Himself and his Council and special Auditors, false Judgments and Errors of Justices are reversed; and there are determined Writs of Appeals, and other Writs upon criminal Actions, and injuries *contra pacem*. He

He hath also his Courts and his Justices residing in the *Exchequer*, and also in *Banco* (now called the *Common-Pleas*) at *Westminster*, and some are assign'd for Gaol-deliveries in every County, and some are assigned to take Assizes generally in every County, and some are itinerant, and constituted to hear and determine all criminal and civil Pleas. Also, the King hath his Justices itinerant, to hear and determine the Pleas of the Forest; and he hath his Court in every County, and in the Sheriffs Turn, and in Hundreds, and in the King's Manors, Cities and Boroughs, as in the Hustings of *London*, *Lincoln*, *Winchester*, *York*, and other places.

And the same Author having afterwards treated more particularly of what Jurisdiction the King had delegated to every Court, he writes thus of the Chancery : *There is, amongst the rest, a certain Office called the Chancery, which ought to be committed*

*Fleta l. 2. f. 75.  
cap. 33.*

mitted to the care of some prudent man,  
as a Bishop, or Clergy-man of great dig-  
nity, together with the care of the great  
Seal of England, under whom are all  
the Chancellors in England, Ireland,  
Wales and Scotland, and all Keepers  
of the Kings Seals, (except the Keeper  
of the Privy Seal) to whom are asso-  
ciated Clerici honesti, honest and  
circumspect Clerks, sworn to our  
Lord the King, and who in the Laws  
and Customs of England have ample  
knowledge; whose Office it is to hear  
and examine the Complaints of Com-  
plainants, and to grant due remedy by  
the King's Writ, according to the na-  
ture and quality of the wrong. And  
there he treats at large of the Offi-  
cers, Clerks, and Business of the  
Chancery, which was to make out  
Remedial or Original Writs, and  
Judicial Writs, also upon Recogni-  
zances and Contracts made in the  
Chancery, and enroll'd there: but  
not one tittle or mention is there  
made by any of the said Authors, of  
any

any Superiority the Lord Chancellor or Lord Keeper, or the Court of Chancery had over the Proceedings of any of the other Judges, either to examine, correct, or rectifie their Judgments, or stop execution thereof, upon any account, colour or pretence whatsoever; which is a most convincing proof, the Chancellor then had no such power:

### SECT. III.

*What is meant by Judging according to Equity; and by Whom it was anciently performed.*

**H**AVING laid the foundation of my present purpose upon what I find in the fore-mention'd Authors, I think it not amiss to say somewhat touching their credit; and first of all, that which gives them a reputation with me, is, that they set down what

what they themselves of their own knowledge knew to be true; they relate what the Law was at the time of the writing of those Books, they took nothing upon trust from other hands, but set down what they themselves knew to be practice. Next, they were men of great Eminency; *Bracton* was a learned Judge, and it was his zeal to Justice induc'd him to write; *Britton* was a Book writ by the King's own command, and publish'd by his approbation; and the others, *Mirror* and *Fleta*, have always had a great reputation amongst the *English* Lawyers, not only ancient, but modern; and Sir *Edward Cooke*, who once was honour'd with the title of *the Oracle of the Law*, in his first *Institutes*, in every page almost quotes those Authors for proof of his assertions; and so doth *Stanford* in his *Pleas of the Crown*: from whence I conclude, that what they wrote for Law, was Law *then*; and if so, it is Law *now*, saving wherein  
it

it is alter'd by the Kings Parliamentary Act; nothing less than That could change the Law.

*Bract.* f. 3. *Bracton*, speaking of Equity, says, *Equitas autem est rerum convenientia quæ in paribus causis paria desiderat Jura, & omnia bene coequiparat*: It is a certain sort of accord and congruity in things, which affects the like Judgments in like Cases, and equally and indifferently considers all circumstances. Equity is that Right which arises and appears upon a due consideration of the written Law, the circumstances of the matter in question, and that natural Justice which a good conscience dictates, and to judge and determine the matter accordingly, I take to be a *judging according to Equity*.

*Britt.* fo. 1. It should seem that all the Judges mentioned by the said Authors, were ty'd to proceed and judge according to prescribed Rules; for by *Britton* it appears, that

that it was the King's will the Laws (which are Rules) should be set in writing, and used and kept in every point, saving to himself, with consent of his Counts, Barons, &c. power to repeal and amend them; but it belong'd to himself alone, principally and in chief to amend false Judgments of his Justices generally, as appears by this; *Car ceo reser-  
bouns nous especialment a nostre  
Jurisdiction.*

The King's command to use the Laws and Rules in every point strictly, was general to all his Judges; but it was only He that had power in all his Judgments to regard Equity above Rules; and he had not only power so to do, but he was oblig'd to it by the latter part of the Coronation-Oath before-recited. It was the King only had an extraordinary Preheminence over the prescribed Rules and

*Braet. lib. 3.  
fo. 107.*

*Braet. lib. 2.  
fo. 24.*

Forms of Law, to moderate the rigour and extremity, and supply the defects thereof upon occasion, when his Judges could not exceed the Rules prescribed them; and this power is as necessary as any thing can be for the right distribution of Justice; for it is impossible to make such Rules before-hand, as may suit with all cases; for an extraordinary circumstance may sometimes happen in some cases, that to judge thereof according to general and prescribed Rules of Law, might be to wrong the party, and so make *summum jus, summa injuria*. But our ancient Kings did not entrust this Power at any time, as I find, with any single person: For, during the Reign of both the *Williams*, *Henry 1.* King *Stephen*, and *Henry 2.* &c. until *Ed. 3.*'s time at leastwise, if not after, there still continu'd a particular Court belonging to che King, which was the place

Elf. Office, ch.  
fo. 25.

Dud. Orig. Jud.  
fo. 25.



place of Sovereign Justice, both for matters of Law and Equity, called *Curia Domini Regis*, and *Aula Regia*, or *magna Curia*, where He himself oftentimes sate in person ; but there he had his Justices *à latere suo sedentes* ; as namely, his Chief-Justice, his Chancellor, his Constable and Marshal, and such others of his Nobles as the King pleas'd to associate to himself for that purpose : The Justice, to inform the King of what was the strict Rules of Law; and the Chancellor, who was usually a spiritual man, to give advice according to Equity, and there matters of Equity were then determined ; And to this Court any man might appeal from the inferiour Courts, to have the Errors of the Judges corrected and amended ; and if the King were absent, the Justiciar was

Capital' Justic'  
præsides primus  
à Rege in Regno  
C. 4. int' fol. 70.  
Cancellarii *Anglia* Dignitas est  
ut secundus à  
Rege in Regno  
habeatur, ibidem  
fol. 78.

the King's chief Representative.

But when it was that first the Chancellor had that power of judging according to Equity so given him, that he alone could do it of course, is not certainly known.

Some suppose, that  
Orig. Ind. fol. 36: cites Lamb. Arch. in *Ed. I.*'s time, when the Power of the *Justiciarius Angliæ* declin'd, the King, together with the Great Seal, entrusted the Chancellor with his own extraordinary pre-eminence of Jurisdiction over the Common-Law, *viz. Power of judging according to Equity*: but that Authors reason is not sufficient to maintain that supposition; for he gives no reason for it, but *that he finds no mention made of any such power in the Chancery by Britton*; which was wrote about the beginning of the Reign of *E. I.* Yet *Britton* mentions the Jurisdiction of all the other Courts; and he concludes from thence, *that if the Chancellors had then had any such*

*such power, Britton would have mentioned it*: which indeed is a good argument that the Chancellor had no such power then, but it doth not follow of consequence, that because he had it not when *Britton* was writ, that he must needs have it immediately thereupon: therefore we must come a little, yea a great way nearer, before we can find this power fixed in the Chancellor alone.

No doubt but when the *Justiciarius Angliæ* was laid aside, the Chancellor, who before that time was but *secundus à Rege in Regno*, became then *primus à Rege*, and was President over the rest when any matter of Law or Equity was determined in *magna Curia*, in the absence of the King; but I cannot find he exercised the Judicative power in matters of Equity alone, until very lately, tho' he did several other things alone. I find, that in *R. 2.*'s time a matter being compromised by

*C. 4. Inft. fo. 83.  
Mag. Cha. 553.*

both sides to the King, the King referred it to the Council, and they make a Decree, which Decree was sent to the Chancellor to confirm under the Great Seal, which was done; after which one of the parties petitioned the King that the matter might be left to the determination of the Common-Law; whereupon the King, by warrant under the Privy-Seal, requires the Chancellor to make *Superfedeas* to the Decree, which was done: whereby it appears, the Chancellor alone did nothing but award Process upon the Decree made by the Council, as the King and They directed. *And this, Sir Edw. Cooke says, was the first Decree in Chancery that ever he observed in all his reading.*

Cooke's Magna  
Charta 553.

He also cites some opinions, that the Court of Equity in Chancery began under *Henry Beaufort* Son of *Jo. of Gaunt*, who was Chancellor in the beginning of *H. 6.*'s time; and his reason

reason for it is, *because there is not in any Book-Case, or Report of the Law, any mention made of any Court of Equity held before the Chancellors, before the Reign of H. 6. and yet all of them speak of the ordinary Power and Jurisdiction of the Chancery*: But in the Reign of H. 6. and E. 4. Cases have been reported to have been determined in Chancery, according to Equity; but it is observable, that most of those Causes were heard before several others, together with the Chancellor; and that in matters of doubt, he adjourn'd the parties into the *Exchequer-Chamber* before himself and the Justices of both Benches, and made his Decrees according to their Opinion: As for instance; In the Year-book of the 37<sup>th</sup>. of H. 6. fo. 13. the Case was, *That one A. had bought of J. R. several Debts due to J. R. from several persons, and A. gave a Bond to J. R. for the sum; And forasmuch as those Debts were but things in Action, and*

*no Property was chang'd, nor no Action accru'd by the bargain to the said A. but the Debtors remained Debtors still to the said J. R. so that A. had nothing for the money secured by the obligation. A. prays in Equity to be discharged of the said Bond against J. R. and prays a Subpœna against J. R. and it was granted, and the Defendant answered, and the Chancellor, because the matter seemed doubtful to him, adjourn'd it to the Exchequer-Chamber before himself and the Justices of both Benches, and there it was debated, and by the Opinion of all the Justices, because the said A. had not quid pro quo by that bargain, therefore the Bond ought to be released, and it was decreed accordingly.*

The like will appear to be done by the Book-cases following, 37 H. 6. f. 35, 36. 39 H. 6. f. 26. 7 E. 4. f. 14. &c. And if he did not adjourn the Causes into the *Exchequer-Chamber*, he always had the Judges, or some of them, with him at all hearings,

rings, and decreed according to their Opinions ; for the entry of the Decrees in Chancery of *H. 6.*'s time are after this manner, says the Author cited in the Margin, viz. *Consideratum est per Curiam ex assensu*

Elf. Off. of Chan.  
fo. 51.

*Johannis Fortescue Milit' Capital' Justiciar' Domini Regis ad placita tenenda & diversorum aliorum Justiciariorum & servient' ad legem in Curia present' existent' quod, &c.* and sometimes it was, *ex assensu omnium Justiciar' utriusq; Banci*, and sometimes of one or two Justices ; but before the end of that King's Reign, the manner of entry of the Decrees was somewhat altered, and was in this manner ; *Considerat' Adjudicatum & Decret' est per Cancellarium & per Curiam Cancellar'*, without particular mention of any Justices or others, and so it continued till *H. 8.*'s time ; But towards the end of his Reign, whereas before that time the Decrees were in *Latine*, and in very few words,

words, and entred on the back-side of the Bills, they then began to be drawn up in *English* apart by themselves, and therein reciting the Bill and Answer, and afterward were enroll'd in Rolls by themselves: The ancientest of that nature that I can find, are in the Rolls Chappel, and are of the 27th. and 28th. of H. 8. when Sir *Thomas Audley* was Chancellor. In *Queen Maries* days the entry of all the Decrees is, *That it is Ordained, Adjudged and Decreed by the Lord Chancellor, and by the whole Court of Chancery, That so and so:* and after the same manner it is at this day, saving that the conjunctive clause *And by the High-Court of Chancery,* (which in the beginning was not inserted in vain) is now altogether superfluous and impertinent; for the Lord Chancellor or Lord Keeper, without the assent or consent of any other, have made Decrees for some years past according to his own *liberum arbitrium*, as I shall shew in the next Section.



## SECT. IV.

*Of the modern and present Power  
and Jurisdiction of the Court of  
Equity in Chancery.*

**I**N the *Chancery* are  
two Courts, one C. 4. Inst. fo. 79.  
Ordinary, wherein the Lord Chan-  
cellor or Lord Keeper of the Great  
Seals proceeds according to the right  
line of the Law, and if he gives an Er-  
roneous Judgement,  
there a Writ of Error Plowd. 393. que  
B. R. est le Pluis  
haut. Court.  
Dyer 315.  
lies returnable in the  
*Kings Bench*; the o-  
ther is Extraordinary,  
wherein the Chancellor ought to  
proceed according to the Rule of  
Equity, which according to what it  
is now taken, is what is according  
to the Chancellor's single Conscience,  
*que.*

Elf. Office of Ch.  
fo. 41.

*quecunq; sit* ; it is (say  
some, ) an absolute  
Power without con-  
troul, other then in Parliament, and  
spreadeth it self most largely with-  
out any Limitation, it stops the pro-  
ceedings of all the other Courts  
at *Westminster*, it renders all their  
Judgements vain and ineffectual,  
*durante bene placito*, of the Chan-  
cellor or Keeper, and stops Execu-  
tion, untill his Conscience be satis-  
fied whether the Plaintiffs at Law  
ought to go on or no, by which  
means when a man hath a Judgement  
fairly obtain'd at Law, or intends to  
Sue there for a Just and True Debt,  
if the Defendant at Law becomes  
Plaintiff in *Chancery*, and he or his  
Council hath but Invention enough  
to suggest any sort of Equity, there's  
an Injunction had of course, until  
the Plaintiff at Law can put an An-  
swer to the Bill ; which if he lives  
any thing remote from *London*, it  
will take up a Month or two's time,  
or

or more, to send an Answer, and in the mean time the Debtor prepares his Bag and Baggage, and by that time the Injunction can be Dissolv'd, which cannot be without a considerable Charge, the Gentlemen is perhaps got to *Ireland*, *Jamaico* or *Japan*.

What ever is now finally determin'd in Equity in *Chancery*, it is done by the Chancellor or Lord Keeper alone, and though the Clerks and Registers retain in drawing up their Decrees somewhat of the old form, *ziz. That it is Decreed by the Lord Chancellor or Lord Keeper, and by the High Court of Chancery*; which implyes there were some others ought to have a hand in making the Decree; yet there is none that now have, for though there are two at least of twelve that bear the name of Masters in *Chancery*, and heretofore were accounted *Socii* and *Collaterales* to the Chancellor that daily sit in Court one on each side  
of

of the Lord Chancellor or Keeper; yet they are now but as his Attendants, and speak not a word in determining any Causes, their only business being to wait and expect how many References the Lord Chancellor will make to them touching insufficient Answers, Scandalous Bills or Answers, Contempts, stating of Accounts and the like, they being to have a Fee for their Report therein, yet that Report is subject to the controul of the Chancellor or Keeper, if he pleases; And if at any time, which is but seldom, any of the Judges are sent for, it often proves to be meerly out of Formality, for their Opinions are seldom regarded.

Elf. Office of  
Ch. 60. 6.

It is said of the Chancellor and Keeper of the Great-Seal of *England*, that he is like the *Roman Prætor*, in whose Constitutions there were said to be two kinds of Powers; one was, when without the

the Advice of the Judges he would Manumittise, Emancipate, Award Possessions of Lands and Goods, Commit Wardship of Pupills, and grant Injunctions as he thought convenient: The other sort of Power the *Prætor* had, was when he proceeded to Judgment according to *Leges Regis*, &c. The Kings Laws, the Laws of the Twelve Tables, the Civil Law, Laws made by the consent of the People, or Decrees of the Senate, and therein he was not absolute as in the other: But our Chancellor or Keeper and their *Prætor* do differ very much, for the *Prætor* would at his Entry into that Office propound and publish certain Edicts, which were Principles and Fountains out of which he would derive his Decrees; but what Rules or General Notions the Lord Chancellor or Lord Keeper in *England* doth assign unto himself for Limitation of Equity, and direction of his Conscience, those lie hid and concealed

cealed in his own Breast, so that neither the Man of Law nor Equity is able to inform his Client what is like to become of the Cause, and consequently no man is able to know what is his own, so that it may be said of this great Officer arm'd with this great Power, as

*Jer. 24. 4.*

was said of Jeremiah's Figs; *Those that were good, were very good; but those that were evil, were exceeding evil:* For that Power if it be used according to the true intent and design of it, is of

*Optima corrupta  
sunt pessima.*

Excellent use, but if abus'd, it is the greatest oppression imaginable; and that that Power hath been abused, will appear by the next Section.

SECT.

## SECT. V.

*Of the Corruptions and Mistakes  
of some Great Chancellors.*

I Find in the Journal Book of the Lords House in the year 1620. and in the 19th. year of King James, that on the 19th. of March in that year, a Message was sent from the Lower House to the Lords, importing, *That they had found Abuses in certain Eminent Persons, about which they desired a Conference with their Lordships, that such course might be taken, as might stand with the Honour and Dignity of a Parliament;* which was agreed to by the Lords, and the Conference was appointed to be that afternoon; and the next day it was Reported to the Lords by the Lord Treasurer : *That at the Conference was deliver'd the desire of the Commons to inform their Lordships*  
E what

*what they had found in their Inquiry  
 after the Abuses of the Courts of Justice,  
 where, after having highly com-  
 mended the incomparable good  
 parts of the then Lord Chancellor,  
 and magnified his place from whence  
 Bounty, Justice and Mercy were to  
 be distributed to the Subject, with  
 which he was wholly Intrusted:  
 They declared that the Lord Chan-  
 cellor was Accused of great Bribery  
 and Corruption committed by him:  
 And instanced two Cases, one con-  
 cerning one Christopher Awbrey, and  
 the other concerning one Edward  
 Egerton: As to Awbrey, the matter  
 was, That He having a Cause in Chan-  
 cery between Him and Sir William  
 Brunker, Awbrey feeling some hard  
 measure, was advis'd to give the Lord  
 Chancellor 100 l. which he deliver'd  
 to his Council Sir John Hastings, and  
 He to the Chancellor; but notwith-  
 standing, the business proceeding slow-  
 ly, Awbrey writ several Letters, and  
 deliver'd them to the Lord Chancellor,  
 but*



but could never have any Answer from his Lordship; but at last delivering another Letter, his Lordship told him, if he importun'd him, he would lay him by the Heels: As to Egerton's matter, it was set out at large at the Conference; and will appear by the substance of Egerton's Petition to the Lords, the effect whereof (amongst other things,) is as followeth; That the said Edward Egerton being Unmarried and Sickly, he settled his Estate to the use of himself and the Heirs Males of his Body, and for default of such Issue, the Remainder to Sir John Egerton and his Heirs, which Settlement was voluntarily made, without any consideration paid for the same, and with Power of Revocation; and that Sir Rowland Egerton, Son and Heir of the said Sir John Egerton, had got the said Settlement into his hands, and all the Petitioners Writings; and that the late Lord Chancellor Ellesmere had Decreed, that Sir Rowland Egerton

*should have the manner of Wrinehal  
 and Haywood Barnes, being a great  
 part of the Petitioners Inheritance,  
 worth 600 l. per Annum, without any  
 cause of Equity contain'd in the said  
 Decree ; and that the Petitioner had  
 made humble Suit to the Lord Viscount  
 St. Albans, then Lord Chancellor of  
 England, to have the benefit of a Sub-  
 ject, to recover his Ancient Inheri-  
 tance by Ordinary course of Law ; and  
 that his Lordship took from the Peti-  
 tioner 400 l. in Gold, and 52 l. 10 s.  
 in Silver Plate, which Money was  
 accepted of by the said Lord Chan-  
 cellor, saying withall, That the Peti-  
 tioner had not only Enrich'd him, but  
 laid a tye upon him to do the Peti-  
 tioner Justice in his Rightful Causes,  
 and by great Oaths and Protestations  
 drew the Petitioner to Seal an Obliga-  
 tion to his Lordship of ten thousand  
 Marks, to stand to his Lordships  
 Award ; and that afterwards the Peti-  
 tioner was divers times sent for by one  
 Robert Sharpeigh, then Steward of  
 his*

his Lordships Household ; and that the Petitioner was several times offer'd, that if he would then presently pay 1100 l. in ready Money, that is to say, 1000 l. to his Lordship, and 100 l. to Sharpeigh, the Petitioner should have all his Lands Decreed to him, which Money he could not readily pay ; and that afterwards the said Lord Chancellor did not only confirm unto the said Sir Rowland Egerton, the Land which he then held of the said Petitioner's Inheritance, being worth 600 l. per Annum, but took away more Lands worth 15000 l. and Decreed the same to Sir Rowland Egerton, who did not claim any Title thereto, before the said Bond taken, and Unlawful Decree made ; and that he also Decreed the Bond should be Assigned to Sir Rowland Egerton : And the Petitioner having spent 600 l. in Suits, and being depriv'd of all his Evidences by the said Lord Chancellor, and by the indirect practice of the said Sir Rowland : He was likely to

be utterly defrauded of all his Ancient Inheritance, contrary to the common Justice of the Land, unless relieved by their Lordships. The Contents of which Petition, the Petitioner made Oath to be true; and he and *Sharpeigh* were further Examined touching the matter.

By the Journal of the Lords House for the 21<sup>st</sup>. of *March*, in the year 1620. It appears that there had been Information given to the House, that there had been a Cause depending in *Chancery* between one *Smithwicke* and *Wiche*, which was matter of Account, and had been Referred to Merchants, and the Merchants had Certified on *Smithwick's* behalf; yet to obtain a Decree in the Cause, he was told by one *Burrough*, (that was near to the Lord Chancellor) that it must cost him 200 *l*. which he paid to the use of the Lord Chancellor; yet his Lordship Decreed but one part of the Certificate: Where-

Whereupon he treats again with *Burrough*, who demands another 100 *l.* which *Smithwick* also paid to the use of the Lord Chancellor; then his Lordship Referr'd the Accounts again to the Merchants, who Certified again for *Smithwick*, yet his Lordship Decreed the second part of the Certificate against *Smithwick*; and the first part, which was formerly Decreed for him, his Lordship made doubtful: whereupon *Smithwick* Petition'd to the Lord Chancellor to have his Money again, and he had it.

It appears further by the said Journal Books, that several days were in a great part Employed in taking Examination of Witnesses in proving and detecting the Briberies and Corruptions of that Lord Chancellor; which being ended and collected, were order'd to be Transcrib'd with the Proofs; and on the 24<sup>th</sup>. of *April* following were order'd to be sent to his Lordship, with a

Message that the Lords requir'd his  
Answer with all convenient speed.

The Corruptions, as they are mentioned to be prov'd in the Journal of the Lords House of the said 24<sup>th</sup> of April, are as followeth :

<i>That in the Cause between Sir Rowland Egerton and Edward Egerton, his Lord- ship received on the part of Sir Rowland Egerton before he decreed for him, —————</i>	}	1. 500
--	---	-----------

<i>Item, of Edward Egerton in the said Cause, —————</i>	}	400
---	---	-----

<i>Item, in the Cause between Hodie and Hodie, a dozen of Buttons (after the Cause end ed) of the value of —————</i>	}	50
--	---	----

<i>Item, of the Lady Wharton,</i>	310
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<i>Item, of Sir Tho. Munke,</i>	100
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<i>Item, of Sir John Trevor,</i>	100
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<i>Item, of one Young, ———</i>	100
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<i>Item, of one Fisher, ———</i>	106
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<i>Item, in the Cause of Ken- day and Valore, of Kenday a Cabinet worth —————</i>	}	800 Of
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Of Valore ( <i>borrow'd</i> at two times) —————	} 2000
Item, in the Cause between Scot and Lenthall, of Scot—	} 200
Item, of Lenthall, ———	100
Item, of one Wroth, who had a Cause between him and one Mannerling, —————	} 100
Item, of Sir Ralph Hansby,	500
Item, in the Lord Moun- taine's Cause, of the Lord Mountaine, and more promis'd at the end of the Cause, ———	} 600 or 700
Item, of one Mr. Dunch, —	200
Item, in a Cause between Raynold and Peacock, 200l. in money, and a Diamond Ring worth 5 or 600 l. ———	} 700 or 800
Item, of Peacock, ———	100
Item, in a Cause of Barker,	700
Item, there being a reference from his Majesty to his Lord- ship of a business between the Grocers and Apothecaries, he had of the Grocers ———	} 200

Of the Apothecaries, ( besides a rich present of Amber-greece ) } l. 150

Item, of the French Merchants, to constrain the Vintners of London to take 1500 Tuns of Wine ; to accomplish which, he used very indirect means, by colour of his Office and Authority, without Bill or other Suit depending, as threatening and imprisoning the Vintners, for which he receiv'd of the Merchants- } 1000

Lastly, That he had given way to great exactions by his Servants, in respect of private Seals, and sealing Injunctions.

By the Journal-book of the 25th. of the said month it appears, that Baron Denham and Mr. Attorney-General reported their delivery of the Charge of the Lord Chancellors corruptions to his Lordship, and that he said he would return the Lords an  
Answer:



Answer: whereupon the Lords soon after sent a message by Baron *Denham* and Mr. Attorney, to know if he would make his Confession, or stand to his Defence; to which they brought answer, That his Lordship would make no defence to the charge, but meant to acknowledge corruption, and to make a particular confession to every point, and after that, an humble submission; but he humbly crav'd liberty, that wherein the charge was more full than he finds the truth of the Fact, he may make declaration of the truth in such particulars; the charge being brief, and not containing all circumstances: Whereupon the Lords sent the same Messengers back to him, to let him know, they had granted him time till *Monday* next, being the 30th. of *April*, at 10 in the morning to send such Confession as his Lordship intended to make.

On the 30th. of *April* the Lord Chief-Justice *Leigh* (who then executed

cuted the place of Lord Chancellor) in the Lords House, signified to their Lordships, that he had received a Letter and paper Roll sealed up; which being delivered to the Clark of the Lords House, and being opened, & found directed to their Lordships, it was read, and began thus:

*To the Right Honourable the  
Lords Spiritual and Temporal,  
in the High-Court of Parlia-  
ment assembled.*

The Confession and humble Submission of Me the Lord Chancellor.

**U**Pon advised consideration of the charge, descending into my own conscience, and calling my memory to an account so far as I am able: I do plainly and ingeniously confess, that I am guilty of Corruption; and do renounce all defence, and put my self upon the Grace and Mercy of your Lordships.

The

The particulars I do confess, and  
declare to be as followeth :

*To the first Article of the charge,*  
viz. *in the Cause between Sir Rowland*  
*Egerton and Edward Egerton, the*  
*Lord Chancellor received 500 l. on the*  
*part of Sir Rowland Egerton before*  
*he decreed the Cause : I do confess and*  
*declare,* Upon a reference from his  
Majesty of all Suits and Controver-  
sies between Sir Rowland Egerton and  
Mr. Edward Egerton, both parties  
submitted to my award by Recog-  
nizance reciprocally in 10000 Marks  
apiece, and thereupon after divers  
hearings, I made my award with ad-  
vice and consent of my Lord *Hobart*,  
and the award was perfected and  
publish'd to the parties, which was  
in *February* ; Then some days after  
the 500 l. mentioned in the charge  
was delivered to me ; Afterwards  
Mr. *Edward Egerton* fled from the  
award ; Then in *Midsummer* Term  
following a Suit was begun in *Chan-*  
*cery* by Sir *Rowland*, to have the  
award

award confirm'd ; and upon that Suit was the Decree made, which is mention'd in this Article.

*To the second Article, viz. That in the same Cause he received from Edw. Egerton 400 l. I confess and declare, That soon after my first coming to the Seal, ( being a time when I was presented by many ) the 400 l. mentioned in the charge was delivered unto me in a Purse, and I now call to mind from Mr. Edward Egerton: But, as far as I can remember, it was exprest by him that brought it to be for favours past, and not in respect of favours to come.*

*To the third Article of the charge, viz. in the Cause between Hodie and Hodie, he receiv'd a dozen of Buttons of the value of 50 l. about a fortnight after the Cause was ended : I confess and declare, That, as it is laid in the charge, about a fortnight after the Cause was ended ( it being a Suit of great Inheritance ) there were Gold Buttons about the value of 50 l. ( as*

is mentioned in the charge) presented unto me, as I remember, by Sir *John Perient* and the party himself.

Thus far it is *verbatim* as it is in the said Journal-book; and after the same form he proceeds, and confesseth the receipt of all the money and other things in the charge, and some particular sums more, but with some little endeavours to extenuate the Crime; as, *that the money was sent as a present after the Causes ended; and confessed, that he had imprisoned some of the Vintners, because they refused to take off the French Wines; and that it was a great fault in him that he look'd not after his Servants.* And then follows these words, *viz. This Declaration I have made to your Lordships with a sincere mind, humbly craving, that if there should be any mistake, your Lordships would impute it to want of memory, and not to any design of mine to obscure truth, or to palliate any thing; for I do again confess, that in the points charg'd upon*  
*me,*

*me, although they should be taken as myself have declared, there's a great deal of corruption and neglect; for which I am heartily and penitently sorry, and submit my self to the Judgment, Grace and Mercy of this Court. And in the close he prays, That if they proceed to a Sentence, their Sentence may not be too heavy.*

The Confession being read, the Lords sent twelve Lords to know if it was his own hand that subscrib'd the Confession, and whether he would stand to it, or no? and being returned, they report, That they had shew'd it to him, and that he own'd it, and would abide by it: Whereupon it was ordered, That the Prince (attended by some of the Lords) should move His Majesty to sequester the Seal; which being accordingly done, the Prince reports to the House, That he had mov'd the King therein, and that his Majesty had promis'd it should be done, and that he intend'd to have done it if they had not mov'd it. The

The second of *May* following a Commission was granted to Sir *James Leigh* Chief Justice, to Officiate the place of the Lord Chancellor in the Lords House; and the Great Seal was taken from the Chancellor, and by Commission committed to be kept by the Lord Treasurer, the Lord Steward, the Lord Chamberlain, and the Earl of *Arundell*.

*Vid. Rot. Parl. ejusdem temp.*

There was not a single Lord keeper from that time until the 10 of *July* 1621. the Business of the *Chancery* being then performed by the Commissioners.

The third of *May* the Commons sent a Message to the Lords to demand Judgment against the Lord Chancellor, to which the Lords return'd answer; they were ready, if They with their *Speaker* would come to demand it; and the *Commons* being come to the Bar of the Lords House, the Chief Justice *Leigh* pronounc'd the Judgment, which was,

1st. That the Lord Viscount St. Albans should undergo a Fine and Ransome of 40000 l.

2d. That he should be Imprison'd in the Tower during the Kings pleasure.

3d. That he should be for ever incapable of any Office, Place or Employment in the State or Commonwealth.

4th. That he should never sit in Parliament, nor come within the Verge of the Court.

I have been more particular in relating these proceedings of the late Lord Chancellor Bacon, because of the great Learning and Eminency of the Man, and the little need he had to be so Corrupt, he had neither Wife nor Child to provide for, and if such a man was guilty of Bribery and Corruption, who may we be sure will not? And therefore great care ought to be taken to have Relief against such contingencies; for Corruption in a Judge of that high commanding Power,



Power, is far beyond all Robbery, Burglary, Rapine, or other Villany the World can invent.

To Err wilfully, and out of a corrupt design; is a greater fault, and more unpardonable, than to err through mistake; but the hurt is the same to him that is injur'd by the wrong Decree; Therefore if we were sure there would never be any such Corruption any more, yet Provision ought to be made against mistakes, since those have been very frequent: whereof I shall give some instances, and for which you shall need to look no further back then to the Journals of the LordsHouse in the last Session of Parliament at *Westminster*, where you may find that the 17th. of *November* 1680. a Decree in *Chancery* was Reversed upon the Appeal of *Crabb* against *Fenton*, and the 22d. of the same Month a Decree in *Chancery* was Revers'd by the Lords upon the Appeal of *Turner* against *Turner*; and on the

26th. of the same Month, another Decree in *Chancery* was Revers'd upon the Appeal of one *Chute* against *Dacres*, and many more Appeals were brought in that Parliament, which yet remain undetermin'd; and since the Lord-Keeper *North's* having the Seal, he hath Revers'd several of the late Lord Chancellor *Nottingham's* Decrees without any new matter arising since the Decree made, so that one of them must be mistaken, but which of them, will not appear but by the judgment of divers others of as great Learning and Judgment as themselves, and so it is to be determin'd; for many may see more than one, and I conceive the King may give them Authority so to do, without putting the Kingdom to the Charge and Trouble of convening a Parliament, as by the ensuing part of this Treatise will appear.

## SECT. VI.

*That an Appeal to the King in the Intervals of Parliament, is an Ancient, Legal Remedy against mistaken Decrees in Chancery, with the manner of Proceeding therein.*

**I**T becomes not a single man to be too positive in his own Opinion, therefore I shall only at present say, that I am most extreamly mistaken in my Calculations, if His Majesty hath not sufficient Power in the Intervals of Parliament, as the Law is at this day, being the 26th: of *June* 1683. to provide for his Subjects, and to Relieve them against unjust Decrees in *Chancery*, if the matter be duely look'd into, notwithstanding the Art and Labour that hath been used to conceal it ; Therefore for maintaining of that

point, I shall once more repeat a Sentence out of *Bracton*, Et defen-  
*Bracton fol. 3.* dous generalment a  
 tout que nul ne eyt

poer de amender nul faur Juge-  
 ment de nous Justices saube les  
 Justices que suent nous et nostre  
 Court que a ceo sont per nous en-  
 titles ou nous mesme on nostre  
 Councel car ceo reserbouns nous  
 especialment a nostre Jurisdiction ;  
 and *Fleta* speaks to the same pur-  
 pose, *Habet enim Rex curiam sua &c.*

*Fleta l. 2. fo. 66.* *habet etiam curiam*  
*suam & Justiciarios*  
*suos tam milites quam Clericos locum*  
*suum tenentes in Anglia coram quibus*  
*& non alibi, NISI CORAM SE MET*  
*IPSO ET CONCILIO SUO VEL*  
*AUDITORIBUS SPECIALIBUS,*  
*Falsa Judicia & Errores Justi-*  
*ciariorum Revertuntur & corri-*  
*guntur :* Whence it is manifest that  
 when those Authors wrote the  
 Power of Reversing Erroneous (or  
*Falsa*) unjust Judgments of all other  
 Courts

Courts was in the Justices that followed the King, and his Court being thereunto Authoriz'd by the King ; but if they had Err'd, the Error was to be Rectified by his Councel or special Auditors, such as the King should think fit, or by the King himself, the supreme Jurisdiction and *Dernier* resort being in the King himself, or where he pleased to place it, *Car teo reservonus nous especialment a nostre Jurisdiction.*

And this is also declar'd to be so by Act of Parliament in the 52. of *H.* 3. *cap.* 10. which ordains, That none from thenceforth, except our Lord the King shall hold in his Court any plea of false Judgments given in the Court of his Cennants, for such Plea especially belongeth to the Crown and Dignity of our Lord the King.

Though the Supream Jurisdiction were in the King to use as he saw best, it is but rational that if the Parliament were sitting at such time

as any Complaints were made to him of any Erroneous Judgment or Decree, that he should refer the Examination and final Determination of the matter to the House of Lords, who without any manner of doubt, are, and always were, the fittest Referrees the King could refer any matter to be determin'd, they being the chief Assembly of the Honour, Integrity, Wisdom and Justice of the Nation, and therefore it is but reasonable the King should take the measures of his final Determination from their Advice, or refer it to them to determine, which is all one, Better or Abler Advisors being not to be found; but it is as true they had no power of Judging by their own innate Authority, but by a delegated Authority from the Kings, as plainly appears by what is said before, and also by the Parliament Roll of the 4 of *Ed. 3.* which is recited in *Cotton's Records*, *In hæc Verba, viz. The Treasons, Felonies, and*  
*other*

*other misdemeanors of Roger Mortimer are particularly repeated, a great part of which Roll cannot be read, for that the Roll is mouldred; but in the end it appears, that the King charg'd the Lords and Peers, who as Judges of the Realm by the Kings Assent, adjudged that the said Roger should be Drawn and Hang'd: Whereby it appears it is the Kings Charge to the Lords, and the Kings Assent that gives them Jurisdiction and Authority: And, so it follows of necessary consequence, that though they are the fittest for the King to Authorize to determine the mistakes and Errors of his Chancellors and other Judges; yet, if when they are not Assembled in a Parliamentary way, there is no reason nor authority against it, nor inconveniency by it, for the King to Authorize a convenient number of the Lords of the Parliament and Judges that are near him to take course with Erroneous Decrees in the mean time until the Parliament*

liament sits ; And therefore it was that it was provided by Act of Parliament the 31<sup>st</sup>. of *Ed. 3. cap. 12.* That the Lord Chancellor and Treasurer should have Power upon Complaint to take the Justices, and such other sage persons as they thought fit, to their Assistance, and to Examine the Judgments of the Exchequer Court. And if any Error be found, they may correct the Rolls, and after send them into the Exchequer to make, thereof Execution : Which thing I conceive the King might have done of himself without Act of Parliament ; and I conceive the Act made it a standing Rule to prevent often troubling the King upon every particular occasion ; and though there be no provision by that Act for any further Examination of the Judgment of the Chancellor and Treasurer in that Case ; yet it is not so final, but the King may upon Petition to him, order a Writ of Error  
re-



returnable in the House of Lords Assembled in Parliament for a further and more due Examination of the matter if either Party thinks himself agrieved thereby, and from that time forward, *viz.* the 31 of *Ed. 3.* there was no standing Order made by Act of Parliament, as to the Errors of the Court of *Kings-Bench*, for by that Name I shall now call the Successors of the Judges that followed the King mentioned in the aforesaid Authors, but it stood at the Kings meer pleasure, as formerly, until the 27 of <sup>27 El. 8.</sup> Queen *Elizabeth*: Yet our latter Kings before that Statute, for the most part used to refer the Examination and Correction of such Errors only to their House of Lords in Parliament, insomuch that for want of oftener referring it to their Council, or to *Specialibus Auditoribus*, Special Commissioners, as *Fleta* affirms the King could do, as is mention'd in the beginning of this Section; it grew to be

be an Opinion, that Errors of the Court of *Kings Bench* could be rectified no where but in Parliament, as appears by the Preamble of that Statute of the 27 of *Eliz.* Therefore and as the Preamble of that Statute mentions, Because the Court of Parliament was not in those days so often held as in ancient time; and because in respect of the great Affairs of the Realm, such Erroneous Judgments, (meaning those of the *Kings Bench*) could not be well consider'd and determin'd in time of Parliament; whereby the Subjects of the Realm were greatly hindred and delayed of Justice. It was therefore enacted, That the Errors of Judgments in the said Court of Kings-Bench in certain Actions therein mention'd, should be examined and rectified in the Exchequer-Chamber by such persons as in the said Act is mentioned; and after the Judgment is affirmed or reversed, the Record, and all things con-

concerning the same, shall be removed and brought back into the Court of Kings-Bench, that such further proceedings may be thereupon, as well for execution as otherwise, as shall appertain. And thereby it is reserv'd, That the parties shall not be finally concluded by such Reversal or Affirmation, but that they may sue in the high Court of Parliament for a further and more due examination of the said Judgment, in such sort as was thentofore used upon erroneous Judgments : And the manner thentofore was, that before any Writ of Error could be brought to examine and correct Errors in Parliament, a Petition was to be preferred to the King for allowance thereof, and it was to be allowed by the King before any such Writ of Error could be made, as appears by the Authorities in the margin ; which makes it most plain *where & in whom*

1 H. 7. fo. 19,  
20. Dy. fo. 375.

the

the Supreme Judicative Power lay.

And Judge *Jenkins* says, *The reason of the Law, and the King's al-*

*Jenk. Lex terræ,*  
fo. 55.

*lowance of a Writ of Error, returnable in the House of Lords, is, for that the Judges of the Land, all of them being of the Kings Council, and the twelve Masters in Chancery, assist in the Lords House, by whose advice erroneous Judgments are redrest : So that it appears plainly, their Judicative Power in that particular is not originally and fundamentally in themselves, but derived from the King, by his allowance thereof, who is fons & origo*

*Braët. lib. 2.*  
*cap. 4.*

*Justitiæ; and, says Braëtton, est enim Corona Regis facere Justitiam & Judicium & tenere pacem sine quibus Corona consistere non potest nec tenere, hujusmodi autem jura sive Jurisdictiones ad personas sive tenementa transferri non poterunt nec per privata personæ possideri nec usus nec executio juris, nisi hoc datum fuerit ei*  
de

*de super sicut Jurisdictio delegata non delegari poterit quin Ordinaria remaneat cum ipso Rege.* And I find by the Journal of the Lords House, that the 10th. of December 1621. a Report was made by a Committee appointed to search for Precedents touching Appeals to the Lords from Decrees in Chancery, *That anciently all Petitions of that nature were directed to the K. and his great Coun-*

In the Stat. 37  
E. 3. 18. by Gr.  
Council is meant  
the Privy-Council

*cel.* From whence I gather, it is but a late practice, both to leave the King quite out of such Petitions, and to neglect praying his allowance, that the Lords may examine Errors of Judgements and Decrees; And perhaps it may prove of ill consequence hereafter, if not timely considered and rectified: the Supremacy of Jurisdiction being the Supreme part of Government, Mir. 232. & the King's chiefest Dignity.

By the foresaid Statutes of E. 3. and E. 1. and some others since made, there

there is sufficient provisions against erroneous Judgments in all Courts at Law in the intervals of Parliament, by Writs of Error, which are in nature of Appeals; which course (I conceive) the King might have taken, if no such Act had been made: But against the Judgments and Decrees of the Courts of Equity in *Chancery, Exchequer-Chamber and Counties Palatine, &c.* there is no provision at all by any Parliamentary Act; that matter standing as it did by the Common-Law, no Parliament having intermeddled with it; which if they had, they had the same reason, or more, to desire the King to constitute a Court of Appeal from these Courts of Equity, as from other Courts. And it is a great Argument with me, (if there were no other) that it was conceived by the Parliament, that there is a Power in the King alone out of Parliament-time to rectifie the Errors of the Decrees of all Courts of Equity; else the Parliament

ment, I presume, would have taken care to have provided against those, as well as against the Errors of the Court of *Kings-Bench*; which provision was made, because they conceived those Errors not to be redressed but in Parliament; and the same reason that induced the Parliament to constitute Courts to redress the Errors of the *Kings-Bench* and *Exchequer*, viz. the infrequency of Parliaments, and their being otherwise employ'd when they sit, may induce the King to appoint Referrees to rectifie Chancery-Decrees.

For the further clearing of this matter, it seems in Queen *Elizabeths* time there was the like doubt made as now, *Whether the Queen might relieve against the mistakes of the Chancellor or Keeper, in making his Decrees?* And the Queen took the right way to be inform'd, she referr'd it to the Judges, to certify to her their Opinion touching that matter: For it appears, Rolls Re. 1 p. 331. by the Authority in the **G Mar-**

Margin, that it was certified by all the Judges of *England*, in the Cause between the Countess of *Southampton* and the Earl of *Worcester* in *Chancery*, that the Queen, upon Petition, might refer the matter to the Judges (but not to others) to examine and reverse the Decree, if there should be cause; and that the then Lord Chancellor agreed to that resolution. And forasmuch as it is mentioned in that Report, that the reference ought to be to the Judges, and not to others: it is to be understood, that it was a point in Law was then in dispute, and in such Cases there must be some Judges amongst them; for, *in arte sua cuiq; credendum est*; and therefore Judges (whose profession the study of the Law is) are presum'd to be best conversant of any what the Law is; and the Law is not to be unregarded in judging according to Equity, but both Law and Conscience are to be so intermix'd, as to produce a just Judgment;



ment; a skill of great curiosity, and ought therefore not to be final, but in the resolution of several men of great knowledge and integrity, since the least byas of affection or disgust to one side or other, may lead any single man a great way out of the way.

I presume this may be the meaning of that Report, because I find in the Year-book of the 27<sup>th</sup>. of H. 8. fo. 15, &c. That the Kings Secretary and Mr. *Fitz-Herbert* were join'd with the Chancellor to review a Decree between the Prior of St. *Johns* and one *Dockeray*, where the Secretary gave rules in the Cause as well as the Chancellor.

The House of Lords themselves always take the advice of the Judges; and to leave matters of Equity wholly to the Chancellor alone in the intervals of Parliament, is to give him a greater power than the Lords take to themselves in Parliament; which, I humbly conceive, ought not to be.

Besides this resolution of all the Judges, assented to by the then Lord Chancellor, it was afterwards agreed to by the House of Lords themselves, That it was proper for the King to give authority to examine and correct Decrees in Chancery, as appears by their own Order, which is as followeth, viz.

*Die Veneris vicesimo octavo die Maii,*  
1624.

**T**He Petition of Will. Matthews of Landaff was read, and the Answer thereunto conceiv'd by the Lords Committees for Petitions (after Council heard on both sides many several days) was reported to the House by the Lord Houghton, and read, in hæc verba, viz.

The Lords Committees upon the examination of the whole Cause between *William* and *George Matthews*, find *William Matthews* principal Debt to be Five thousand two hundred and sixty pounds, which they hold

hold fit to be paid by the said George Matthews thus :

Upon St. Andrews day next,	One thousand six hundred twenty four,	2000 l.
Upon St. Andrews day,	One thousand six hundred twenty five,	2000 l.
Upon St. Andrews day,	One thousand six hundred twenty six,	1260 l.
The whole sum,		5260 l.

And that for security for the payment of this Debt according to every several day and payment here set down, the whole Land to stand bound ; and that this be the better performed, the Lords Committees think fit the execution hereof be recommended to the Court of Chancery.

*Die Veneris vicesimo octavo die Maii,*  
1624. *post meridiem.*

George Matthews exhibited his Petition, *in hæc verba, viz.*

*To the Right Honourable the  
Lords Spiritual and Temporal,  
in the higher House of Parlia-  
ment assembled.*

*The humble Petition of George  
Matthews, Esq;*

*Humbly sheweth your Lordships,*

**T***hat your Petitioners Decree now  
question'd, hath been several  
times submitted unto by William Mat-  
thews, never question'd during the life  
of the Petitioners Father; and His  
Majesty, upon information by Petition  
on both sides, declared, That he saw no  
Cause for questioning thereof; and  
it was thereupon ordered, That to hear  
a Cause after submission, (no Cor-  
ruption appearing) would be a dan-  
gerous Precedent. In consideration  
whereof, and for that the Decree stands  
question'd only by Petition, nor was  
your now Petitioner ever party to any  
Suit,*

*Suit, nor is there any Bill depending in Court ; he being informed by Counsel, that it hath been the course of this Honourable House to reverse Decrees but by Bill legally exhibited, especially where no corruption is prov'd :*

He therefore most humbly beseecheth, That he may have the liberty of a Subject, and that he may not be concluded, and a Decree submitted unto overthrown, and the small remainder of his ancient Inheritance taken from him, by Order of this Honourable House, only upon a Petition. He most humbly submits himself herein to your Lordships, and will ever pray for your Honourable preservation.

This Petition being read and considered of, these Lords, (*viz.*) the Earl of *Montgomery*, the Lord Bishop of *Durham*, the Lord *Say and Seal*, and the Lord *Denny*, were appointed

by the House to set down an Order  
in this Cause between *William* and  
*George Matthews*.

*Die Sabbati, vicesimo nona die Maii,*  
1624.

**T**He Lords Committees appointed  
yesterday in the afternoon to set  
down an Order in the Cause between  
*William* and *George Matthews*, re-  
ported the same to the House in hæc  
verba, viz.

**T**He Lords of Parliament  
do order, That the Cause  
depending between *Will. Mat-*  
*thews* and *George Matthews*, shall  
be reviewed in *Chancery* by the  
Lord Keeper, assisted by such of  
the Lords of Parliament as shall  
be nominated by the House, and  
by any two of the Judges whom  
the Lord Keeper shall name;  
for

for which end the Lord Keeper is to be an humble Suitor unto his Majesty from the House, for a Commission unto himself and the Lords that shall be named by the House, for the said Review and final Determination of the Cause, as to them shall appear Just and Equal: And this the Lords desire may be done with all convenient speed.

*The which Order being read, the House approved thereof, and these Lords were named by the House to be joyn'd in the said Commission with the Lord Keeper, viz. the Lord Chamberlain, the Earl of Montgomery, the Earl of Bridgwater, the Lord Bishop of Durham, the Lord Bishop of Rochester, the Lord Denny, and the Lord Houghton; and the House ordered the same Cause to be heard and determined*

*mined accordingly in the beginning of the next Michaelmas Term.*

This agrees *verbatim* with the Records of the Lords House ; and pursuant thereunto, the matter was review'd by these Commissioners, and a Decree by them made in reversal of the Chancery-Decree, as appears by the Registers Book of Orders in *Chancery*, of *Michaelmas* and *Hillary Term* in the 22<sup>d</sup>. year of King *James*.

Sir *Edward Cooke*, in his Jurisdiction of Courts, Title *Chancery*, with great approbation reports several Cases of Decrees in Chancery referred to the Judges by Queen *Elizabeth*, to be examined and amended ; and it is to be noted, that his authority in that Case was seventold ; for when he wrote that Book, he was very much incens'd against the King for being put out of his Chief Justiceship, and set himself as much as he could against the Prero.

*Anderson* 2 part  
163. to the same  
effect.



Prerogative, as appears by the whole current of that Book ; so that had there been any colour of denying the Queen this Power, he had never cited those Cases without Objections.

It was not only practiced by Qu. Elizabeth and King James, but also by King Charles the first, as appears by an Order which I find in the said Registers Office in the Book of Entry of Orders there of the 22<sup>d</sup>. of November, in the 7<sup>th</sup>. year of King Charles the first, between one Sherbourn, the Executor of one Munford, the Executor of one Challener, Plaintiff, and one Townley and Forrest Defendants ; which begins thus :

**T**He matter upon his Majesties reference to the Right Honourable the Lord Keeper, upon the humble Petition of the said Townley, coming this day to be heard in the presence of Counsel learned on both sides, before his Lordship, being assisted by Mr. Justice Hutton,

Hutton, Mr. Justice Jones, Mr. Justice Whitlock, and Mr. Justice Harvey, the Question appear'd to be, Whether, or how far, the said Townley ought to be bound by the Decree made on the behalf of the said Munford for the sum of 17000 l. against the Defendant Townley, in Case the Defendant Thomas Forrest should not pay the same? And upon the hearing, a Bill of Review was ordered to be brought by Townley, either upon matter not insisted on at the first hearing, or new matter, and according to the course of the Court, the said Townley was ordered to give security, and in the mean time the execution of the said Decree, and all proceedings thereupon, as against the said Townley, was respited and suspended; and whereas by the first Decree Townley was decreed to pay as well what his Co-Trustee Forrest had received of the Profits of the Estate of Challenger, as what he had received himself: Upon the hearing upon the said Bill of Review,

*Review, the first Decree was revers'd, and Townley decreed to answer only so much as he himself had received, which appear'd by the proofs to be but three half years Rent, and it was referred to a Master in Chancery to audit the account touching the three half-years Rent, and the Recognizance given by Townley to perform the Order of the Court, was discharged.*

In the same Registers Office I find another Entry of an Order of June 1. in the 12th. year of King Charles the first, between one Pennington and others Plaintiffs, and one Holmes Defendant, in these words :

**W**Hereas, upon Petition exhibited to the Kings most Excellent Majesty by the Defendant, supposing some injustice and wrong to have been done unto him by a Decree made in this Court between the foresaid parties, his Majesty was most graciously pleased to refer the matter to the Master

*ster of the Rolls, to call to his assistance one of the Judges of the Bench, and to hear what could be alledged against the said Decree: And this day being appointed for the hearing of the matter, the Master of the Rolls calling to him Mr. Justice Crooke, and having heard the parties and their Council on both sides, and what could be alledged against the said Decree, why the same should not be put in execution, saw no cause to recede from, or alter the same.*

Now, after the Opinion of all the Judges of *England*, assented to by the then Lord Chancellor for the legality of this sort of proceeding, and the approbation of the House of Lords, and their direction for humble Suit to be made to the King for a Commission from Him to proceed accordingly; and after so continu'd a series of practice for the Reign of Three of the best Princes that ever sway'd a Scepter, without the least Ob-

Objection then made against it by any that I ever read or heard of: I say, after all this, sure one would think there could be no room for any colour of illegality in that sort of Proceeding.

But it is objected, That the Power and Right of this sort of proceeding is since taken away by the Statute of 16 *Car.* 1. cap. 10. But I hold, that Statute doth not do it in the least, nor doth it carry in it the least colour or look that way; though, indeed, it doth take away somewhat too much (as I conceive) of the King's Power, but not this of *referring the examination and correcting of erroneous and unjust Decrees in Chancery to fit persons for that purpose.* I am sure 'tis not prohibited by that Statute by any particular words, nor are there any general words therein contain'd, that according to the rules of Law, and construction of other Statutes, can be construed to extend to the taking away of that course of

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proceeding. For the clearing of which point, it is requisite that the Statute should be taken strictly into consideration; the prohibiting part whereof is as followeth:

Be it Ordained and Enacted by the Authority of this present Parliament, That the said Court, commonly called the Star-Chamber, and all Jurisdiction, Power and Authority belonging to or exercised in the same Court, or by any Judges, Officers and Ministers thereof, be from the first day of August 1641. clearly and absolutely dissolved, taken away and determined; and that from the said first day of August, neither the Lord Chancellor, nor the Keeper of the Great Seal of England, the Lord Treasurer of England, the Keeper of the Kings Privy Seal, or President of the Council, nor any Bishop, Temporal Lord, Privy Counsellor, Judge or Justice whatsoever, shall have any Power or Authority to hear, examine or determine any matter or thing whatsoever, in the said Court commonly called

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led the Star-Chamber, or to make, pronounce, or deliver any Judgment, Sentence, Order or Decree, or do any Judicial or Ministerial as in the said Court: and all and every Article, Clause and Sentence in them and every of them, by which any Jurisdiction, Power or Authority is given, limited, and appointed unto the said Court commonly called the Star-Chamber, or unto all or any the Judges, Officers, or Ministers thereof, or for any proceedings to be had or made in the said Court, or for any matter or thing to be drawn into question, examined or determined there, shall, for so much as concerneth the said Court of Star-Chamber, and the Power and Authority thereby given unto it, be from the said first day of August repealed, and absolutely revoked and made void.

And be it likewise Enacted, That the like Jurisdiction now used and exercised in the Court before the President and Council in the Marches of Wales, and also before the President and Council established in the Northern-parts, and also in the Court

commonly called the Court of the Dutchy of Lancaster, before the Chancellor, and Councel of that Court; and also in the Court of Exchequer of the Countie Palatine of Chester, held before the Chamberlain and Councel of that Court, the like Jurisdiction being exercised there, shall from the first day of August 1641. be also repealed and absolutely revoked and made void, any Law, Prescription, Custom, or Usage, &c. to the contrary thereof in any wise notwithstanding; and that from thenceforth no Court, Councel, or place of Judicature shall be erected, ordained, constituted, or appointed, within the Realm of England or Dominion of Wales, which shall have, use, or exercise the same or the like Jurisdiction as is or hath been used, practiced or exercised in the said Court of Star-Chamber

Be it likewise Declared and Enacted by the Authority of this present Parliament, That neither His Majesty nor His Privy-Councel have or ought to have any Jurisdiction, Power and Authority, by English Bill, Petition, Article, Libel, or  
any



any other arbitrary way whatsoever, to examine or draw into question, determine or dispose of the Lands, Tenements, Hereditaments, Goods or Chattels of any of the Subjects of this Realm; but that the same ought to be tryed and determined in the ordinary Courts of Justice, and by the ordinary course of Law.

These are all the prohibitory words of that Statute. I will not say any thing of the reasonableness or unreasonableness of it, but that it was made in 41. But taking it as it is, I think it deserves no further construction to disable the King from performing his Oath, that is, *to see that Justice should be done to his Subjects*, than the very express words will bear; and for the right understanding of it, it is to be considered in all the parts thereof, without relying on any one single Clause alone, and thereby it will appear how far the whole may be construed to take

away any Power that was before in the King.

It takes away the *Star-Chamber* and the Power thereof, and prohibits the erecting of any Court of the like Jurisdiction, by express terms; but by so doing it meddles not with this Power of the Kings to refer the examination of an unjust Decree made in Chancery by One man, to Three or Four, or more men, fit for the purpose, neither in terms nor in construction: And it is a great argument that it was never intended to be taken away by that Act, because it is not taken away by express words; for if it had been intended to have been taken away, it might have been express'd by particular words, it being no new invention since the making of that Act, but a course long practis'd before that Act was made, as appears by what is aforesaid, and that without the least contradiction, but on the contrary, with the greatest approbation that could

could be, viz. the approbation and direction of the Lords House in Parliament at one time, and of all the Judges of *England* at another time, as is aforesaid, and of all the great Writers of the Law of those times; so that there was then no apparent reason for taking it away.

The next part of the Statute, and that which seems most to oppose me, is, *That the King nor His Privy-Council have, or ought to have, any Jurisdiction, Power or Authority, by English Bill, Petition, Article, Libel, or any other arbitrary way, to examine, draw into question, determine, or dispose of the Lands, Tenements, &c. but that the same ought to be tryed and determined in the ordinary Courts of Justice, and by the ordinary course of Law.*

For the understanding of this, it is to be remembred, the King, for the execution of the Law, had two sorts of Powers in Him by the Common-Law; He had Power and Authority

*Ordinaria Juris-*  
*dictio pertinet*  
*ad Regem, Bract.*  
*fol. 108, 412.*  
*Ordinaria Juris-*  
*dictio remanet*  
*cum ipso Rege,*  
*Bract. fol. 55.*

and this is properly called *Jurisdiction*; and he had also *designatio Judiciorum*, a power of nominating and appointing Judges under him to hear, determine, and dispose of

the Estates of the Subjects, touching which any Controversie did arise, and was brought before them to be decided, as appears in the beginning of this Treatise; So that if he should be

*Sect. 2. per tout.*

excluded himself by this Statute from hearing and determining in person, yet there is not a word that excludes him from nominating Judges to hear and determine: Therefore, if he could nominate Referrees to rectifie a Chancery.

Chancery-Decree before the Statute, as most apparently he could, he may do so yet, there being not one word in the Statute that prohibits it. And whereas it prohibits all arbitrary ways whatsoever of disposition of the Subjects Estates by the King or his Privy-Councel, this course is not to promote Arbitrarynefs, but to prevent it; for it is more arbitrary to leave Causes to the final determination of one single mans Judgment, than to refer it to the Judgment of five or six, it being not so easie to corrupt or deceive many as one, and that is the reason why a Tryal by Jury of Twelve is so much approv'd of, and applauded; for they being many, cannot all be easily corrupted.

*Fortescue fol. 75.*

And as to that part of the Act that says, *The fore-mentioned Estates ought to be tryed and determined in the ordinary Courts of Justice, and by the ordinary course of Law*: certainly none can say that have considered the pre-

misses, but that referring the examination of Chancery-Decrees to a convenient number of sage persons, as is aforesaid, may very well be accounted a proceeding in Chancery according to the ordinary course of that Court, since the first practice of the Court was to determine not by the Chancellor alone, but by the consent of divers others

Sect. 3.

as is aforesaid. And I conceive the House of Lords terming it *a reviewing of the Decree in Chancery*, when they directed application to be made to the King for a Commission, as is afore-mentioned, and all the Judges of *England* giving their Opinion for the legality of such proceeding, and the same consented and agreed to by the then Lord Chancellor, and the long continued practice of it without any dislike, (when there was occasion) as I have made appear for several Princes Reigns, and until an unparalleld Rebellion and Usurpation, put that (as well as all

all things else) out of course ; may intitule it to *an ordinary course of proceeding*, if any proceeding at all in Equity in Chancery can be so accounted; and the determining Causes there by the Chancellor himself, without any assistance or consent of others, is more like an arbitrary and an extraordinary way, and new sort of practice, than that.

For further manifestation of this matter, and that a reference from the King to examine the injustice of a Chancery-Decree is a proceeding in Chancery, and no erecting of a new Court, and that as well when the Lord Chancellor or Lord Keeper is not one of the Referrees or Commissioners, as when he is, it appears by the proceeding upon the fore-mentioned Reference by the King to the Master of the *Rolls* and a Judge of the *Kings-Bench*, to examine the injustice of the Decree between *Pennington* and *Holmes* afore-mentioned : That upon that reference , the pro-  
cee-

proceedings on the first Decree was staid, and what was done thereupon is entred among the proceedings in *Chancery*, as an Act of that Court ;

*Dugd. Orig. Ju.*  
fol. 32. That *Escheldred* appointed the Office of Chancellor to be exercis'd by three *Abbots* by turns.

See the Parliament Roll of that time, and *Dugd. Chronological Table of Chancellors and Keepers.*

And moreover, it cannot be deny'd but the King may commit the custody of his Great Seal to several Commissioners, as King *James* did upon the outing of the corrupt Lord *Bacon* ; and in such cases one of the Commissioners keeps the Seal, and is President amongst the rest,

but they have all equal Authority in judging according to the purport of the Commission, \* and do sign Decrees ; and if the King may make many Judges in Equity to hear

\* 12 Maii 1976c. ordered in *Chancery*, inter *Butler*

and *Eliot*, That the Decree made by the Lord *Bacon* should not be signed by the Commissioners of the Great Seal, until notice to the other side, as by the Registers Book of Orders in Chancery of that day appears.

all



all Causes generally, what is the reason he cannot appoint many Judges there in some few particular Causes, upon complaint of mistake by his Chancellor or Keeper? since he that may do more can do less, and the King is not ty'd to have any certain or limited number of Judges in his Courts; for there were in the *Common-Pleas*, in *E. 4.*'s time and before, sometimes 6, 7, or 8, and King *James* had five Judges in the *Kings-Bench*, (whereof my Great-grand-father Sir *David Williams* was the fifth) and as many in the *Common-pleas*, about the beginning of his Reign, as may appear by *Dugdale's* Chronological Table of Judges of that time: So that I cannot apprehend any manner of prohibition, neither express nor implied, in this Statute nor any other, against the Kings referring the examination and regulating unjust Decrees in Chancery to others, besides the Chancellor or Keeper.

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This Statute deserves not to be extended beyond it self, it being a penal Statute, which is never to be taken by Intendment, further then the very exprels words of the Prohibition upon a strict and bare construction will bear, however the Statute it self in the conclusion hath by exprels words somewhat mended the matter from what is contain'd in the premisses; for in the end of the Act there is a Provisoe which doth in effect restore the King to almost all his Ancient Jurisdiction, and puts all the seeming Cause of doubt about the matter of Referring the Examination of unjust Decrees in Courts of Equity quite out of doors, by confining the meaning and construction of the Statute to the words of the Provisoe therein contained, which Provisoe is in these words, **Provided** always, and be it Enacted, that this Act and the several Clauses therein contain'd, shall be taken and Expounded to extend

extend only to the Court of Star-chamber, and the said Court holden before the President and Council in the Marches of Wales, and before the President and Council in the Northern parts, and also to the Court commonly call'd, the Court of the Duchy of Lancaster, holden before the Chancellor and Council of that Court; and also in the Exchequer of the County Palatine of Chester, before the Chamberlain and Council of that Court, and to all Courts of like Jurisdiction to be hereafter Erected, Ordain'd, constituted or appointed as aforesaid, and to the Warrants and Directions of the Council-board, and to the Commitments, Restraints and Imprisonments of any person or persons made, commanded and awarded by the Kings Majesty, his Heirs and Successors in their own Persons, or by the Lords and others of the Privy-Council and every one  
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of them. So that here's an Explanation that no Court or Proceeding in any Court is to be taken away but the Court of *Star-chamber* and the Jurisdiction thereof, and such like Courts of like Jurisdiction; and this of the Kings referring the Examination of unjust Decrees in *Chancery* to particular Commissioners and Referrees, was practis'd out of the *Star-chamber*, when that Court was at height, as may appear by the fore-cited Presidents; so that it never was a part of the Jurisdiction or practice of that Court, and therefore declared by the said Proviso not intended to be prohibited by the said Act; and as to the King the Proviso says, He is to be restrained but from restraining and imprisoning by his own personal command, he may do every thing else that he could have done before; He may hear and determine in person, if he pleases, as he could have done before; and he may appoint all such  
Judges

Judges or Referrees to all purposes, as he could have done before : But as to the Warrants of Imprisoning, if any cause for such there should be, he is to leave that to his Ministers ; and the King, if he thinks fit, upon complaint to him made of Injustice or other Error done by his Chancellor or Keeper, may order his Chancellor to order the parties concern'd to appear before the King in person, and the King himself may require his Chancellor or Keeper to be present, and his Majesty may call others to his assistance, whom he may confide in for just and equitable advice, and may determine what to him seems meet in the Cause, upon conference with them, this being for *advancement*, not *delay* of Justice ; and if the Chancellor or Keeper doth not use the coercive part of Imprisonment, and other Process of the Court of Chancery to compel Obedience to such determination, I conceive he doth not do his duty. I  
 mention

mention this, not that I think it's absolutely necessary the King should trouble himself to hear all matters in person, but I humbly conceive it not amiss for his Majesty sometimes to use his Power in Chancery as well as at Council-board, lest for want of using his Power, he may be in danger of losing it, and consequently his esteem in the eyes of the people, may be lessen'd; whilst every of his acting Judges (the Chancellor or Keeper especially) command respect from their Friends, and fear and trembling from their Enemies.

I am sure *Solomon's* giving Judgment in the case of the Harlots gain'd him more esteem, not only amongst his own Subjects, but all the World over, than any one other act of Government he did in all his Reign, and the Kings not being exactly skill'd in the Law, or the formal Rules thereof, as a profess'd Lawyer should be, should not at all hinder his undertaking it sometimes; for a man but  
of

of common sense, having heard the Case put, the proofs made, and the Arguments of indifferent men, (not byas'd Advocates, or Councel only) may easily discern what Judgment is fit to be given in Equitable Causes; and the King hath almost infallible helps; He hath his Lords Spiritual and Temporal; He hath always at his call twelve Judges, men skill'd in the Laws, and sworn lawfully to counsel the King in all matters: These, or some of them, he may command to attend him at such Hearings, and may command them to give their opinion of the matter, according to the nature of the Cause, and according to the best of their judgments; and the King at such hearing may give, or cause to be giv'n a Sentence or Judgment according to the Opinion of the majority of them; and this course is the best, and was the old way of judging of Equity; and if us'd some times, would make Chancellors and Keepers more  
I regard

regard what they do : But if the King should not be minded to meddle in person with determining any Causes, his referring of the examination of Chancery-Decrees to persons fit and able, of judgment and knowledge to do it, may suffice, better then to leave it wholly to his Chancellors single judgment ; For, *securius expediuntur negotia comissa pluribus, & plus vident oculi quam oculus.*

There is at this day a standing Commission enroll'd in Chancery to all the Judges of *Westminster hall*, the Master of the Rolls, and the other Masters in Chancery, empowering any Three of them, (whereof the Master of the Rolls or one of the Judges to be one) in the absence of the Lord Keeper to hear and determine Causes, and that is not thought to be prohibited by any Statute : And if the King hath Authority and Power to appoint Commissioners for the Chancellor or Keepers ease, why cannot



cannot he also give power to Commissioners to rectifie his Decrees when he mistakes?

The Chancellor or Keeper of the Great Seal is but the King's Deputy during pleasure, 9 Rep. 99.

and a Grant of that Office for life is void, *Cooke* 4 Inst. fol. 87.

Upon the whole matter, I must conclude, I can apprehend no warrantable objection can be made against this sort of proceeding, or that any Statute doth, or intended to take it away: so that I shall take that point for granted, *That it is very lawful for the King to appoint Referrees or Commissioners to rectifie Chancery Decrees, or Decrees of any other Court of Equity.*

The next thing to be considered is, Whether any of the King's Privy-Council may be Referrees or Commissioners for that purpose, notwithstanding the said Statute? For they are men of so great Honour, Knowledge and Integrity, and of such Fortune and Estates, as to scorn Bribery, and therefore very fit to assist in

this matter; and I hold *They may*; for the prohibition of the Act extends to their not acting as being only and barely Privy-Councillors: It doth not say, *Privy-Councillors shall not act by virtue of any other Authority*. And this thing proves it self plainly in the Case of the now Lord Keeper, and Lord Chief Justice of the *Common-Pleas*, who are both of the Privy-Council, yet examine, draw into question, determine and dispose of the Lands, Tenements, Goods and Chattels of the Subjects, with a witness, by virtue of another Authority derived from the King; and if *They may* do it, why may not any other of the Privy-Council act by a lawful Authority in those matters, as well as *They*?

The next thing considerable, is, if the Lord Chancellor or Keeper ought to command performance according to the course of the Chancery, of what such Referrees do order by virtue of such Reference, when

when he himself is not one of them, as well as when he is; and I hold *he ought*; First, for whatever Order is made in the House of Lords upon determining an Appeal from Chancery-Decrees, it is sent to the Chancery, to compel Obedience thereto; and in this respect, I conceive the House of Lords are but the Kings Referrees, and do legally and truly derive their Authority from the King, as is prov'd by the due Proceedings upon Writs of Error, and the ancient form of Petitions against Chancery-Decrees before-mentioned: So that such Referrees do act by Authority derived from the King, as well as the House of Lords in Parliament. And further, the practice hath been for the Lord Chancellor or Keeper to pursue what is done by such Referrees; for what was resolved by the Judges upon the References mentioned in Sir *Edw. Cooke* 4 Institutes, and certified by them to the

Chancellor was comply'd with by him; and what was decreed by the major part of the Commissioners joyn'd with the Lord Keeper, in the Case of *Matthews* and *Matthews* before-remembred, was confirmed, and prosecuted by the Lord Keeper, as Lord Keeper, in and according to the course of Chancery; and so in the case of *Sherburne* and *Townley*; and had been so also in the case of *Pennington* and *Holmes* before-mentioned, if there had been any alteration of the Decree; for the confirmation of that Decree by virtue of the Kings reference, is entred as an Act of that Court: so that I think that point is also pretty clear. And (I presume) the enrolling or performing of a Decree, before Petition to the King, or before obtaining his Commission or Order of reference, (which are both as sufficient one as the other, there being a sufficient number of Precedents of both sorts) is no hindrance but that restitution may be awarded, if

if the Commissioners and Referrees make certificate to the Chancellor or Keeper that it ought to be so ; for the enrollment of a Decree doth not make it more irrevocable then it was before the enrollment, but that notwithstanding it may be altered in the same Court ; for it is not a Record, and in that respect not so high in the eye of the Law as a Judgment according to the course of the Common-Law, which cannot be reversed in the same Court ; and this was so held in *H. 8.*'s

time, in a Cause in 37 H. 8. fol. 15. Chancery before mentioned in the *6th.* Section, between the Prior of *St. Johns* and one *Dockeray* ; where upon a review in Chancery before the Lord Chancellor, the King's Secretery, and Mr. *Fitz-Herbert*, it was held and allowed, that a Decree there is but an Order made by the Court for the time ; which upon good consideration, and cause shewn, may well be altered,

notwithstanding all the arguments then made by the Council for the first Decree, to prevent inspecting into it, as that such looking back tended to confusion, and would make Causes endless, and the like : whereunto the Kings Secretary ( sitting then in equal authority with the Chancellor, as appears by the Report) made answer, and commanded the formal man that was against inspecting the injustice of the Decree to forbear disputing the Power of that Court ; and such was the practice of the late Lord Chancellor *Nottingham*, who would often re-hear and re-hear again and again,

The Cause between *Thacker & Redman* was several times heard by the Lord *Not-*

*tingham*, and heard again by the Lord Keeper *North* on the 20th. of *April*, 35 *Car.* 2. after the Decree enroll'd ; and upon that hearing, a Tryal at Law directed, which must occasion another hearing.

upon Councils certifying it under their hands that there was good Cause, as they appre-

hended,

hended, for such rehearing his frequent saying, being, that the nimbleness of a Clark in enrolling his Decree should not hinder him from coming at Justice, and that he would leap over Hedge and Ditch to do it; and doubtless it is the true and proper power of that Court of Equity so to do: And though it doth of discretion entertain some Forms, yet it may, and ought upon occasion to leave them, rather then tie up its own hands from doing Justice; for it hath *Potestatem absolutam* 9 E. 4. f. 15. *secundum probata Judicare*; and if ever any Chancellor did amiss in that respect, it was in that he would leap lustily for some, but would not hop over a straw for others: I wish none in that great place be ever more guilty of the like partiality.

It appears from what is before-mentioned, that the Court of Equity in Chancery is the King's high Court of conscience for moderating the rigor, and supplying the defects of the  
Com-

Common-Law, and he may order it, and limit the Jurisdiction thereof as to him seems most agreeable to Equity and Justice ; a further instance

At the *Rolls*, 6  
pars 14 Jac. nu.  
25.

whereof appears by an Enrollment of a Commission now to be seen in Chancery, beginning

thus :

**J**AMES *by the Grace of God, &c.* wherein it is mentioned, *That the Attorney-General and the rest of the Kings Council learned in the Law had been commanded to consider and certify to the King if the Chancery might relieve according to Equity after a Judgment at Law ; and therein is mentioned the consultation had by the Kings Council thereupon, and their reasons on the point, and the Roll ends thus: We in Our Princely judgment having well weigh'd, & with mature deliberation considered of the said several Reports of Our learned Council, and all the parts of them, &c.*

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*Do will and command, That Our Chancellor or Keeper of the Great Seal for the time being, shall not hereafter desist to give to Our Subjects, upon their several complaints now and hereafter to be made, such relief in Equity. notwithstanding any former proceeding at the Common-Law against them, as shall stand with the true merits and Justice of their cases, &c. And for that it appertains to Our Princely care and Office only to be Judge over all Our Judges, and to discern and determine such differences as at any time may or shall arise between Our several Courts touching their Jurisdiction, and the same to set and to decide as We in Our Princely Wisdom shall find to stand most with Our Honour, and the example of Our Royal Progenitors in the best of times, and the general Weal and Good of Our People, for which We are to answer to God, who hath placed Us over them. Our will and pleasure is, That Our whole Proceedings herein, by the Orders formerly*

*formerly set down, be enroll'd in Our Court of Chancery, there to remain of Record, for the better extinguishment of the like Question that may arise in future times.* Decimo octavo Julii, Anno Regni Regis Jacobi quarto. decimo, per ipsum Regem.

But after all I have said, if there be any that have considered the premisses, and will still deny the Kings Power, I must also say, That for determination of the matter, the opinion of his Majesties learned Judges is to be the Touch-stone; therefore, for a further inducement to enquire further of them touching this matter, which is my principal aim hereby, I shall in the next place give a hint of the inconveniences that do happen for want of this course of Proceeding.

## S E C T. VII.

*The Inconveniencies that accrew  
for want of a constant Relief  
against Erreneous and Unjust  
Decrees in Chancery.*

**T**O apprehend the mischiefs that may ensue for want of a constant and permanent practical Power to controll and rectify mistaken Decrees in *Chancery*, it is a necessary to look back to the fourth *Section* for the Power of that Court, and how far it extends, which is there set down in some measure.

It is also considerable, how ill some Chancellors have us'd this their so great unlimited Power, which appears in the Lord *Bacon's* Case, here in also before re-cited in the fifth *Section*; for it is not Impossible but that some of his Successors may do the like, which if but any one should,  
it

it would be very hard for many a poor Creature to wait the Convention of a Parliament, especially if it should happen that another usurping part of a Parliament like that about 41. should attempt to play the old Game again'; so that in such case, the King must perhaps either leave many of his Subjects utterly undefended against the corrupt and vicious proceedings of another *Bacon*, or endanger his own safety, by letting them sit; in which case, by the Rule of Self-preservation, the King ought to save himself: But setting aside this matter of corruption, as if no such would ever hereafter be in the World, if we consider humane frailty, and the real mistakes every single man may be subject to; especially when beset with the mercenary Arguments of three or four Hireling Advocates of a side, who think themselves oblig'd, when opportunity serves, to mistake for their Clients, according to the measure of the Fees they receive,

ceive, as I have known some of them knowingly do; and sometimes they prevaricate and omit what they ought to say, if either Feed on both sides, or not high enough Feed of the side they are of; by means whereof a circumspect Lord Chancellor or Keeper may innocently be seduc'd to make an ill Decree, and by force thereof a poor man must either go to Prison, or part with the best part of his Substance, so that by both ways, himself and Family are brought unjustly to want and misery; and if he be a Trades-man, it is odds but he breaks one or two more, for Trades-men are like Nine-pins, one seldom falls alone; and if a Parliament when it meets should find leasure from publick business to examine the matter, and should see cause to alter the Decree, and Award Restitution, the man that got the Money by means of the ill Decree, may have spent it all, gone beyond Sea, or dead, without Assets, or  
 twenty

twenty such Chances may happen, that the Money may never be got again by any Art or Industry whatsoever, which would be prevented if there were a place to Appeal, before performance of the ill Decree ; and moreover, it remains a doubtful case as to the many Decrees of the late Lord Chancellor *Notingham* Revers'd by the now Lord Keeper *North*, which of the two Lords are in the right, he that made the Decrees, or he that Revers'd them, it being not fairly to be decided, but by the Advice and Opinion of a greater number of as Wise and Judicious men as themselves, and that is a fair and reasonable way of determining it, for *vis unita fortior* ; but the greatest inconvenience of all, is that which concerns the Government ; for while this opinion stands, That the King cannot hear the matter in Person, nor refer it to others, though to some of the self same Lords that sit in Parliament ; but that the matter  
must

must wait their meeting in a Parliamentary way, it may make the people believe that the Supremacy of Jurisdiction is in the House of Lords, and not in the King, and consequently lessen him in their opinion; for People Love and Honour them most from whom they find most Relief against Injury; and how consistent that is with Monarchy, and how agreeable it is with our Oaths willingly to suffer, let any man Judge that hath Sense and Loyalty. Since all the Courts of *Westminster* have four Judges in each Court, men Learned in the Laws, of known and visible Integrity, and all Sworn, *To do equal right to all, and to take no Fee or Roabes of any man great or small, but of the King himself, during their being Judges*; And who in their proceedings are ty'd to Rules; and since Appeals by Writ of Error, by special Provision by Act of Parliament,

18 E. 3. 7. Oath  
of Just.

ment may be at all times had against their Judgments; and since there are frequent Appeals from all Ecclesiastical Courts, and from the Court of Admiralty out of Parliament. It is a mighty mystery to me, and the policy of it is not Intelligible, that any man should labour to prop up this Opinion, that there should be no Appeal but to Parliament from this Court of Equity in *Chancery*, where there is now but one Judge, and his Orders and Decrees controuling all the Judgments of other Courts, and he therein ty'd to no other Rule but his own Conscience, be it good or bad: I think a Chancellor or Keeper for his own Justification, should not be against the Kings Examining his Decrees, or Referring them to fit persons to be Examined and Corrected, which without peradventure is not only the best and surest way for Administration of Justice in this Case, and so far from setting up an Arbitrary way, or an Extraordinary



ry Course, that it is but restoring the Court of Equity in *Chancery* to its Ancient and Primitive form of Judicature, the definitive Judging there by the Chancellor alone being but an Innovation upon the Original Institution of that Court, as appears by what is aforesaid, and to the end there may be no obstruction in the way, I have enquir'd how far the King ought by Law to provide for his Injur'd Subjects, in case of Appeal to him from Erroneous or Unjust Decrees in *Chancery* by a Lord Chancellor or Keeper.

### SECT. VIII:

*Whether the King ought ex debito Justitiæ to hear in Person, or to grant References upon Complaint to him made against Erroneous and Unjust Decrees in Chancery.*

I Have as great Veneration for Kingly Government, and am as

Firm and Faithful to it as any man can be; however I think it no presumption to affirm, that the King ought to do his Subjects right, by using the best means he may for administration of Justice amongst them, *pertinet ad Regem ad quamlibet injuriam compeſcendam competens remedium adhibere.* It is no dishonour to him that he is oblig'd to it, for it is for that end he is ordain'd by God and obey'd by men, it is therein consists the height of his Clory and the lustre of his Majesty, and says

*Fleta* fo. 17.  
par. 15.

*Fleta, Whereas it is so ordain'd that every man in prosecution of his right, Potius Judiciſ quam viribus utatur, Should make use of the Law rather than force :* The injur'd are to come to the King, and having shew'd him the wrong they have suffer'd, he ought to do speedy Justice to his Petitioners; yet the King is not to be troubled, but when his Ordinary Judges fail of their Duty: For, *Nemo in*

*in lite Regem appellato  
nisi quando domi jus  
consequi non poterit.*

Orig. Jul. fo.  
20.

A Complaint to the King by Petition against the Error and Injustice of a *Chancery* Decree, is an Appeal to the King from his Chancellor, from the Inferior Judge to the Superior, which is very natural; and a Petition to him for allowance of a Writ of Error, to the House of Lords to inspect and certify a Judgment of the Court of *Kings-Bench*, or *Exchequer Chamber*; and an Appeal to the King from his Ecclesiastical Courts, and from the Court of Admiralty, are all grounded upon the same natural Justice; and by reason of the Kings Supremacy of Jurisdiction, and that as well by force of the Common as Statute Law.

Of Appeals in general, Sir *Edw. Cooke* cites the Opinion of a Learned Judge of the Admiralty, and some others to this effect, *For as much as an Appeal is a natural defence, it*  
can.

*cannot be taken away by any Prince  
or Power; but if the  
Appeal be just and law-  
ful, the Superior Judge*

*Cook's 4 Inst.  
fo. 340.*

*ought of right and Equity to receive  
and admit the same, as he ought to do  
Justice to the Subject; and so if the  
Cause of the Appeal be just and Lawful,  
he ought to Reverse and Revoke all  
mean Acts done after the Appeal  
brought in prejudice of the Appeallant:  
But I need not much labour that  
point, for I can Experimentally say,  
that His Majesty is very desirous that  
His Subjects should have the full and  
free benefit of the course of Justice,  
and if any ever fail of it, it ought not  
to be imputed to the King, but to  
his Council, whose advice is the  
Kings guide; and if they mis-advise  
the King, and he follows their advice,  
he is excusable; yet he is not bound  
always to follow their advice, if he  
be really satisfied in himself after hea-  
ring their reasons, that it ought  
to be otherwise than they advise; for*

as he is plac'd by God above them, it is to be presum'd God may supply him with a more discerning Spirit than they, and enable him to distinguish between the best and worst advice, having heard the reasons of both: Yet they that knowingly advise the King ill, or neglect to advise him well, when occasion requires, are to blame; therefore I hope His Majesties Privy Council will consider of this matter, and advise and desire His Majesty to take the Advice and Opinion of His Judges, who are His proper Council therein: For in my poor judgment, and as I have heard from most Judicious men, the restoring this kind of proceeding aforementioned for Relief against unjust Decrees in *Chancery*, and other Courts of Equity, will be as much for the Kings Honour and His Subjects Good, as any other part of his Jurisdiction: For I say again, there is no Robbery, Piracy, Burglary, or other Villany whatsoever, so mischievous  
and

and insupportable, as the unjust taking away of a mans Estate by colour of doing Justice, and therefore most worthy of His Majesties care to prevent. *Cum Index indulgeat indigno nonne ad prolaptionis contagium provocat universos*, Bract, 107.

I expect to be Censur'd by some for what is here set down, though I challenge all mankind to charge me with any misrecital or false quotation; but that which most troubles me, is my consciousness of my own inability to perform the matter, least a good Cause should suffer by ill management: However, having done my best, I hope it will be taken in good part by all Honest men; more I cannot do, lest I durst not for my Oaths sake; and if any be offended with me, this shall be my Sanctuary,

*Fiat Justitia si ruat Cælum.*

F I N I S.

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